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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928

No. 623 32

CHARLES WARNER COMPANY, PETITIONER,

vs.

INDEPENDENT PIER COMPANY

No. 624 23

CHARLES WARNER COMPANY, PETITIONER,

vs.

STEAMSHIP "GULFTRADE," WHEREOF GULF REFINING COMPANY IS CLAIMANT

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITIONS FOR CERTIORARI FILED NOVEMBER 14, 1927

CERTIORARI GRANTED JANUARY 3, 1928

(33,075, 33,076)

(33,075, 33,076)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 623

CHARLES WARNER COMPANY, PETITIONER,

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DOCKET ENTRIES.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN ADMIRALTY.

1 of 1924.

CHARLES WARNER COMPANY, v. Steamship "GULFTRADE," Steam-tug "TRITON," Steam-tug "F. A. CHURCHMAN," GULF REFINING COMPANY, INC., INDEPENDENT PIER COMPANY, ALFRED C. CHURCHMAN.	Conlen, Acker, Manning & Brown, Esqs. H. Alan Dawson, Esq., H. M. Long, Esq.

Jan. 3, 1924. Libel, filed.

Jan. 3, 1924. Stipulation for Costs with Fidelity and Deposit Company of Maryland, surety, filed.

Jan. 3, 1924. Attachment—exit—returnable January 11, 1924.

Jan. 3, 1924. Citation—exit—returnable January 11, 1924.

Jan. 31, 1924. Claimants ("F. A. Churchman") Stipulation for Costs with National Surety Company, surety, filed.

Jan. 31, 1924. Stipulation for Release ("F. A. Churchman") in $7000, with National Surety Company surety, filed.

Feb. 15, 1924. Citation returned—service accepted and filed.

Feb. 15, 1924. Attachment returned—service accepted—with agreement of counsel as to entry of claim and Stipulation, filed.

Aug. 15, 1924. Answer of Independent Pier Company Owner "Triton," filed.

Aug. 15, 1924. Answer of Alfred C. Churchman Owner "F. A. Churchman," filed.

Oct. 6, 1924. Praecipe to place case on Trial List, filed.

Nov. 1, 1924. Praecipe to place case on Trial List, filed.

Dec. 20, 1924. Answer of Gulf Refining Company, filed.

Aug. 3, 1926. Praecipe to place case on Trial List, filed.

Oct. 8, 1926. Argued sur Proofs and Pleadings.

Oct. 21, 1926. Testimony, filed.

Oct. 26, 1926. Depositions on behalf of Libellant (1-27-1926), filed.

Oct. 26, 1926. Depositions on behalf of Libellant (3-30-1926), filed.

Oct. 26, 1926. Depositions on behalf of Libellant (8-11-1926), filed.

Oct. 26, 1926. Depositions on behalf of Libellant (10-6-1926), filed.

Dec. 21, 1926. Argued.

Jan. 12, 1927. Depositions on behalf of Tugs, filed.

Jan. 12, 1927. Depositions (in open Court), filed.

Jan. 12, 1927. Opinion, Dickinson, J., granting Decree in favor of Libellant and against respondent Steamship, filed.

Feb. 23, 1927. Decree in favor of Libellant, filed.
Mar. 3, 1927. Assignments of Error, filed.
Mar. 8, 1927. Bond for Costs by Independent Pier Company (Owner "Triton") with National Surety Company, surety, filed.
Mar. 8, 1927. Stipulation for Value in $7000, with National Surety Company, filed.
Mar 8, 1927. Petition for Appeal and Decree granting prayer of Petition, filed.
Mar. 8, 1927. Praecipe as to transcript of record sur Appeal, filed.
Mar. 8, 1927. Citation allowed and issued.
Mar. 10, 1927. Assignments of Error on behalf of Gulf Refining Company, Inc., ("Gulftrade") filed.
Mar. 10, 1927. Petition of Gulf Refining Company, Inc. (Claimant "Gulftrade") for Appeal and Decree granting prayer of Petition, filed.
Mar. 10, 1927. Citation by Gulf Refining Company allowed and issued.
Mar. 11, 1927. Citation (Independent Pier Company) returned—service accepted and filed.
Mar. 16, 1927. Citation (Gulf Refining Company) returned—service accepted, and filed.
Mar. 19, 1927. Praecipe as to transcript of record sur appeal with agreement of proctors thereto and acceptance of service filed.

LIBEL AND COMPLAINT.

(Filed Jan. 3, 1924.)

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

CHARLES WARNER COMPANY, a corporation, v. Steamship "GULFTRADE," her engines, etc.; Gulf Refining Co., Inc.; Steam-Tug "TRITON," her engines, etc.; Independent Pier Company; Steam-Tug "F. A. CHURCHMAN," her engines, etc., and Alfred C. Churchman.	In Admiralty. No. 1 of 1924.

To the Honorable, the Judges of the Said Court:

The libel and complaint of Charles Warner Company, a corporation, owner of the Barges Nos. 18 and 33, and charterer and lawful bailee of the Barge No. 44, and owner of the cargoes laden on the said

barges, against the steamship "Gulftrade," her engines, boilers, machinery, tackle, apparel and furniture, and against all persons lawfully intervening for their interest in the said steamship and Gulf Refining Co., Inc., a corporation and owner of the said steamship; the steam-tug "Triton," her engines, boilers, machinery, tackle, apparel and furniture, and against all persons lawfully intervening for their interest in the said steam-tug; and Independent Pier Company, a corporation, owner of the said steam-tug; and the steam-tug "F. A. Churchman," her engines, boilers, machinery, tackle, apparel and furniture and against all persons lawfully intervening for their interest in the said steam-tug; and Alfred C. Churchman, owner of the said steam-tug, in a cause of collision, civil and maritime, respectfully alleges and shows as follows:

First: The libellant is a corporation organized and existing under and by virtue of the laws of the State of Delaware, having its principal office and place of business in Philadelphia, Pennsylvania, and at all the times hereinafter mentioned, was and now is the owner of certain barges known as Nos. 18 and 33, and the cargoes loaded thereon, and was at all the times hereinafter mentioned, charterer and lawful bailee of a barge known as No. 44 and owner of the cargo loaded thereon, and is duly authorized to file this libel and to prosecute this action as charterer and bailee of said barge No. 44 and on behalf of said barge No. 44 and its owner.

Second: The Barge No. 18 is a wooden barge, about 100 ft. in length and 26 ft. in breadth and 8½ ft. in depth and at the time of the collisions hereinafter mentioned, the said barge was tight, strong, staunch and seaworthy, and properly manned,

equipped and supplied, and had on board a cargo of about 471 tons of pebbles, which was properly stowed thereon.

Third: The Barge No. 33 is a wooden barge about 120 ft. in length, 28 ft. in breadth, 8.9 ft. in depth, and at the time of the collisions hereinafter mentioned, said barge was tight, strong, staunch and seaworthy, properly manned, equipped and supplied, and had on board a cargo of about 643 tons of concrete sand, which was properly stowed thereon.

Fourth: Barge No. 44 is a wooden barge about 120 ft. in length, 28 ft. in breadth, 8.9 ft. in depth and at the time of the collisions hereinafter mentioned, was tight, strong, staunch and seaworthy, properly manned, equipped and supplied, and had on board a cargo of about 568 tons of pebbles which was properly stowed thereon. The said barge, at the times hereinafter mentioned, was owned by W. S. Porch and was duly chartered to the libellant by the said owner and the libellant was the lawful bailee in possession thereof.

Fifth: At all the times hereinafter mentioned, the steamship "Gulftrade" was and is a large tank steamer of 6,859 gross tons, being 429.3 feet in length, 59.2 feet in breadth and 41.4 feet in depth, and hailing from the port of Port Arthur, Texas.

Sixth: The respondent, Gulf Refining Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Texas, has an office and place of business in Philadelphia, Pennsylvania, within the jurisdiction of this Honorable Court, and, at all the times heretofore referred to

was and now is the owner of the steamship "Gulftrade."

Seventh: At all the times hereinafter mentioned, the steam-tug "Triton" was and is an iron steam-tug of 84.8 feet in length, 19 feet in breadth and 9 feet in depth, and of a burden of 98 gross tons, and hailing from the port of Philadelphia.

Eighth: The respondent, Independent Pier Company, is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania and has an office and place of business in the City of Philadelphia, State of Pennsylvania, within the jurisdiction of this Honorable Court, and was, at the times hereinafter referred to, and now is the owner of the steam-tug "Triton."

Ninth: At all the times hereinafter mentioned, the steam-tug "F. A. Churchman" was and is a steel steam-tug of 75.8 feet in length, 17.6 feet in breadth and 7.8 feet in depth, and of a burden of 74.98 gross tons, and hailing from the port of Philadelphia.

Tenth: The respondent, Alfred C. Churchman, is a citizen and resident of the City of Philadelphia, State of Pennsylvania, and was at the times hereinafter referred to, and now is the owner of the steamtug "F. A. Churchman."

Eleventh: On October 1, 1923, at or about 2 P. M., the Barges Nos. 18, 33 and 44, and another similar barge known as the No. 53, departed from the mouth of Mantua Creek in the Delaware River in tow of the steam-tug "Taurus," owned by the libellant, bound for the 49th Street Wharves and the Bain-

bridge Street Wharves, Schuylkill River, Philadelphia.

The barges were loaded with gravel and pebbles, as aforesaid, and the tow was made up in two tiers of two barges abreast, No. 53 being the port barge of the first tier and No. 18 the starboard barge; No. 44 the port barge of the second tier and No. 33 the starboard barge. The two tiers were connected by lines running from the stern of the barges in the first tier to the bow of the barges in the second tier, were held together by bow and stern breast lines and were towed on hawsers, about 100 feet in length, running from the stern of the tug to the bows of the two barges in the first tier. The tide was flood. The weather was clear and there was a slight westerly wind.

The tug and its tow proceeded up the Delaware River, crossed to the western side and continued towards the mouth of the Schuylkill, well over to the western shore, and outside of the main ship channel. As it neared the mouth of the Schuylkill River, a steamer, which afterwards proved to be the "Gulftrade," proceeding up the Delaware River a considerable distance astern of the tug and tow, blew a signal of one blast of the whistle, indicating a desire to pass the tug and her tow to starboard. The tug immediately replied with an assenting signal of one blast of the whistle, and continued to hold its course well over to the westward of the channel.

Shortly thereafter, as the tug and tow were entering the Schuylkill River, the "Gulftrade" blew a second signal of one blast of the whistle, which was answered by the tug. The "Gulftrade" was then shaping its course to enter the Schuylkill River and had two tugs alongside, one at her port bow, the "F. A. Churchman," and one at her port quarter,

the "Triton." The course and movements of the "Taurus" and her tow were then, and at all the times until the collisions hereinafter referred to, patent to those in charge of the navigation of the "Gulftrade" and of the "Triton" and "F. A. Churchman" and it was then, and at all times, the duty of the "Gulftrade" and the "Triton" and "F. A. Churchman" to keep out of the way of the "Taurus" and its tow in passing or endeavoring to pass.

As the "Gulftrade" neared the "Taurus" and its tow, the latter held its course well to the westward of the channel and as close to the westward bank of the Schuylkill River as was consistent with safe navigation. The "Gulftrade," however, did not hold her course but was observed to sheer to port and head directly for the tow. Those on the "Taurus," observing the movements of the "Gulftrade," immediately blew a signal of four blasts of the whistle but the "Gulftrade," continuing her course, in a few moments ran into the Barge No. 33, the port bow of the "Gulftrade" striking the starboard side of the barge, pushed that barge and Barge No. 44 to port, and continuing, struck Barge No. 18, the stem of the "Gulftrade" striking the barge, pushing it to starboard and Barge No. 53 to port. The towing lines and the hawsers between the barges were broken, Barges Nos. 44 and 33 were damaged and Barge No. 18 was seriously damaged by the collision and almost immediately filled and capsized, her master being drowned and her entire cargo being lost. The above collisions occurred about 3.15 P. M. a short distance inside the buoys at the entrance to the Schuylkill River and well to the westward side of the channel.

Twelfth: The above collisions were not caused or contributed to by any fault, carelessness, negligence

nor inattention to duty on the part of the said steamtug "Taurus," nor those in charge of her, nor on the part of the Barges Nos. 18, 33, 44 and 53, nor those in charge of them, nor on the part of their owner, nor on the part of any other person for whom or for whose acts they or any of them are responsible or liable; but was due solely to and caused wholly by the faults, carelessness, negligence and inattention to duty of the said steamship "Gulftrade," and Gulf Refining Co., Inc., the tug "Triton" and the respondent, Independent Pier Company, and the tug "F. A. Chuchmann" and the respondent, Alfred C. Churchman, and those in charge of the navigation of the said vessels in the following respects, among others which will be pointed out upon the trial of this action:

The steamship "Gulftrade" and Gulf Refining Co., Inc., were at fault:

1. In that the said steamship was not in charge ot a competent master or other person;

2. In that her navigation was not being directed by a competent pilot;

3. In that she did not have a competent lookout properly stationed;

4. In that she failed to keep a proper lookout;

5. In that she failed to navigate in accordance with the requirements of the established steering and sailing rules and of safe and prudent navigation in the circumstances.

6. In that she failed to observe the signals exchanged between her and the tug "Taurus" and to navigate in accordance with the duties imposed upon her thereby.

7. In that she failed to keep out of the way of the tug "Taurus" and her tow;

8. In that she failed to maintain her course and pass to the starboard of the said tug and tow;

9. In that she negligently changed her course and ran into and collided with the barges in tow of the tug "Taurus."

10. In that she failed to seasonably slacken her speed, or stop, or reverse, when the collision became imminent.

11. In that those in charge of her navigation were incompetent and inattentive to their duties.

12. In that she maintained an excessive speed in the circumstances.

13. In that after the danger of collision was or should have been apparent, those in charge of her navigation took no efficient means to prevent same.

14. In that she ran into and collided with the said tow.

The steam-tug "Triton" and respondent, Independent Pier Company, were at fault:

1. In that the said tug was not in charge of a competent master or other person.

2. In that those in charge of her navigation were incompetent and inattentive to their duties.

3. In that she failed to observe and navigate in accordance with the requirements of the established steering and sailing rules and of safe and prudent navigation under the circumstances.

4. In that she failed to observe the signals exchanged between the steamship "Gulftrade" and the "Taurus" and failed to navigate and manoeuver herself and the "Gulftrade" in accordance with the duties imposed upon her thereby.

5. In that she participated in the wrongful and negligent manoeuver which caused the collisions aforesaid.

6. In that, after the danger of a collision was or should have been apparent, she failed to so manoeuver the steamship "Gulftrade" as to avoid the collision.

The steam-tug "F. A. Churchman" and respondent, Alfred C. Churchman, were at fault:

1. In that the said tug was not in charge of a competent master or other person.

2. In that those in charge of her navigation were incompetent and inattentive to their duties.

3. In that she failed to observe and navigate in accordance with the requirements of the established steering and sailing rules and of safe and prudent navigation under the circumstances.

4. In that she failed to observe the signals exchanged between the steamship "Gulftrade" and the "Taurus" and failed to navigate and manoeuver herself and the "Gulftrade" in accordance with the duties imposed upon her thereby.

5. In that she participated in the wrongful and negligent manoeuver which caused the collisions aforesaid.

6. In that, after the danger of a collision was or should have been apparent, she failed to so manoeuver the steamship "Gulftrade" as to avoid the collision.

Thirteenth: By reason of the premises and of the said collision, your libellant has suffered damages in the sum of about six thousand dollars, ($6,000.00), as nearly as the same can now be ascertained, no part whereof has been paid or tendered, although duly demanded.

Fourteenth: The said steamship "Gulftrade" and tugs "Triton" and "F. A. Churchman" are now within the port of Philadelphia and within the admiralty and maritime jurisdiction of this Honorable Court.

Fifteenth: All and singular the premises are true

and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libellant prays that process in due form of law, according to the practice of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said steamship "Gulftrade" and the said tugs "Triton" and "F. A. Churchman," their engines, boilers, machinery, tackle, apparel and furniture, and that all persons having, or claiming to have any interest therein, may be cited to appear and answer, on oath, all and singular, the matters aforesaid, and that process in due form of law, according to the practice of this Honorable Court in matters of admiralty and maritime jurisdiction, may issue citing the above-named respondents, Gulf Refining Co., Inc., Independent Pier Company and Alfred C. Churchman to appear and answer, on oath, all the matters hereinbefore set forth, and that this Honorable Court may be pleased to decree to the libellant, and against the steamship "Gulftrade," the steam-tugs "Triton" and "F. A. Churchman," and Gulf Refining Co., Inc., Independent Pier Company and Alfred C. Churchman, and recover all libellant's damages, as set forth herein, together with interest and the costs of this litigation, and that the said steamship "Gulftrade" and tugs "Triton" and "F. A. Churchman," their engines, boilers, machinery, tackle, apparel and furniture, may be condemned and sold to pay the same; and that libellant may have such other and further relief in the premises as in law and justice may be proper.

CONLEN, ACKER, MANNING & BROWN,
ROBERTS & MONTGOMERY,
Proctors for Libellant.
By GEORGE A. MAENE.

EASTERN DISTRICT OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA, } *ss.*

ALFRED D. WARNER, JR., being duly affirmed according to law, deposes and says that he is the vice-president of Charles Warner Company, the above-named libellant, and is duly authorized to make this affidavit on its behalf; that the facts set forth in the foregoing libel are true and correct to the best of his knowledge, information and belief.

ALFRED D. WARNER, JR.

Affirmed to and subscribed before me this 28th day of December, A. D. 1923.

GEORGE A. MAENE,
(Seal) *Notary Public.*
My commission expires March 25th, 1925.

ANSWER OF INDEPENDENT PIER COMPANY.

(Filed Aug. 15, 1924.)

To the Honorable Judges of said Court:

The answer of Independent Pier Company, a corporation incorporated under the laws of the State of Pennsylvania, managing owner of the steam-tug "Triton" on behalf of said tug, her tackle, apparel, furniture, engines, boilers and machinery and on behalf of itself as respondent in the above case, to the libel and complaint of Charles Warner Company in an alleged cause of collision, civil and maritime, alleges as follows:

1. That the Independent Pier Company at all the times hereinafter mentioned was and is now a corporation duly organized and existing under the laws of the State of Pennsylvania, with its principal place of business at Philadelphia, in said state, and was and is now the managing owner of the tug "Triton" and owner of seven-eighths interest therein, the other one-eighth interest being owner by James Edmiston of Philadelphia, Pa. That the business of this claimant respondent consists of furnishing towage, wharfage, lighterage and stevedoring services to vessels applying for the same in and about the port of Philadelphia, and said company uses the tug "Triton" in and about its said business.

That at all said times the tug "Triton" was tight, staunch, strong and seaworthy and properly and sufficiently manned and equipped, and in every way fitted for the service in which she was engaged.

2. Claimant respondent admits on information and belief that the libellant is a Delaware corporation with its office at Philadelphia, but has not sufficient information to form belief as to the ownership of the barges or scows No. 18 and 33 or as to their cargoes, or as to what interest said corporation had in barge or scow No. 44 and its cargo, nor has it such information as to the authority of the libellant to bring and prosecute the libel herein and demands strict proof of all these allegations.

3. Claimant respondent has not sufficient information to form belief as to the dimensions of Barge 18 or Barge 33 or Barge 44, nor as to the carrying capacity of the respective boats, nor as to the condition, manning, equipping or supplying of the respective boats, nor as to the amount of cargo loaded upon

the respective boats and for greater certainty denies the allegations in these respects contained in the second, third, and fourth paragraphs of the libel and demands strict proof of the same.

4. Claimant-respondent upon information and belief admits that the "Gulftrade" is a large tank steamer of about the dimensions and about the tonnage set forth in paragraph five of the libel and that said steamer hails from Port Arthur, Texas.

5. Claimant-respondent is advised by counsel that it is not required to make answer to the allegations contained in the fifth and sixth paragraphs of the libel, although this claimant-respondent believes that the allegations contained therein are substantially correct.

6. Claimant-respondent admits the allegations contained in the seventh and eighth paragraphs of the libel, except it avers that it is the owner of 7/8ths of the tug "Triton" and James Edmiston is the owner of 1/8th of said tug.

7. Claimant-respondent is advised by counsel that it is not required to answer the allegations contained in the ninth and tenth paragraphs of the answer, although it believes the allegations contained therein are substantially correct.

8. Claimant-respondent has not sufficient information to form belief as to the time when the tug "Taurus" proceeded with her tow or as to her port of departure or as to whether she was bound on the voyage mentioned or as to what cargo was loaded upon the respective barges, or as to the condition of

the tide or weather, or direction of the wind at said time and leaves to libellant to make proof of the same. Respondent has not sufficient information to form belief as to how the tow was made up or as to the length of the hawsers on which the boats were being towed, and leaves libellant to prove the same at the trial. The remaining allegations of paragraph eleven are partly true and partly untrue and except as they are hereinafter admitted they are denied.

9. This claimant-respondent denies the allegations contained in the twelfth paragraph of the libel in so far as fault is alleged against the tug "Triton" and the Independent Pier Co. and further alleges that the sole fault for the collision was that of the tug "Taurus" and those in charge of her and of her barges or scows and those in charge of them, as more particularly appears in the subsequent portion of this answer.

10. Claimant-respondent upon information and belief denies the allegations contained in the thirteenth paragraph of the libel.

11. Claimant-respondent admits that the tug "Triton" was within the port of Philadelphia, and within the admiralty and maritime jurisdiction of this Court.

12. Claimant-respondent denies that all and singular the premises of the libel are true but admits the jurisdiction of the Court.

13. Further answering said libel and as a further defense thereto, claimant-respondent avers that in the afternoon of October 1, 1923, the steamer "Gulf-

trade" loaded with a full cargo of crude oil and bound to the wharves of the Gulf Refining Co., Girard Point, was lying in the Delaware River, at a point about opposite Hog Island, Philadelphia. At that time the tugs "Triton" and "F. A. Churchman" proceeded to the "Gulftrade" for the purpose of assisting her into and up the Schuylkill River to her destination. Shortly after the arrival of said tugs alongside the "Gulftrade," the tug "Triton" was made fast on her port quarter and the tug "F. A. Churchman" on her port bow. The captains of the respective tugs thereupon went on board the "Gulftrade" and on to her bridge and proceeded to assist the officer of the steamer in navigating her to her destination. The master of the "Triton" was actually assisting in the navigation of the steamer while the captain of the "Churchman" was standing on the bridge for the purpose of transmitting the orders received by him to the officer in charge of the tug "Churchman," such work was being done by these respective masters as independent contractors, the master of the "Triton" being paid the usual pilotage fee for said work.

Both said tugs in assisting the steamer in her navigation acted at all times upon and in accordance with the orders and directions from said steamer and said steamer was at all times navigated under her own steam and power, with her own helmsman at the wheel, with her navigating officer on the bridge, another officer stationed on her forecastle head and one aft. The steamer's draft at this time was about 29 feet, and it was appreciated by those in charge of the steamer that after she had entered the mouth of the Schuylkill River she would be required to navigate a channel not over 250 feet in width for a vessel of the draft of the steamer.

Under the above circumstances the "Gulftrade" with her tugs proceeded on her voyage and while so proceeding, and when the steamer and her tugs were about opposite Fort Mifflin the libellant's tug "Taurus" with a tow of four loaded sand scows two abreast, the first two being connected to the tug by a hawser and the other two being connected with the two forward sand scows with a hawser, was observed by those in charge of the steamer and the tugs, heading to go into the mouth of the Schuylkill and at a distance of about three-fourths of a mile distant. The tide was flood, weather clear, and the steamer with her tugs proceeded at slow speed. The vessels continued to proceed and after the "Taurus" with her scows had gotten straightened out on the ranges marking the entrance to the Schuylkill River, but before the steamer and her tugs had turned out of the Delaware River, and when the two flotillas were a considerable distance away, a one-blast signal was blown by the "Gulftrade" to indicate that she desired to pass the "Taurus" and her tow to their starboard. The signal was promptly answered by the "Taurus" with one blast, and she pulled a little further over to her own port, but continued to navigate in the main ship channel. The "Gulftrade" with her tugs were overhauling the "Taurus" and her tows and when the two flotillas were a distance of about a half a mile apart the "Gulftrade" blew another signal of one blast which was answered by the "Taurus." The steamer and her tugs continued to proceed, and it was observed by those in charge of the steamer that the "Taurus" and her tow were not giving the steamer and her tugs as much passing rom as they should, and could, and thereupon the "Gulftrade" blew a third one-whistle signal which was answered by the "Taurus" with one blast, and

very shortly thereafter the "Taurus" sheered with her tow to her starboard and across the bow of the "Gulftrade." At this time the "Taurus" with her tow was about a good length of the "Gulftrade" distant from the steamer, and it was realized by those in charge of the steamer that this unlawful maneuver of the "Taurus" and her tow was about to cause a collision. At this time the engines of the "Triton" and the "Churchman" were not in motion, but immediately after the sheer on the part of the "Taurus" and her tow, both the "Triton" and "Churchman" received an order to come full speed ahead and to hard aport their wheels for the purpose of pushing the bow of the steamer still further over to her starboard. This order was obeyed on the "Triton" and on the "Churchman." The "Taurus," however, as a result of her sheer brought herself and her two leading scows over to the starboard of the course of the "Gulftrade," causing the "Gulftrade" to come into collision with Scow No. 18 which was the starboard scow of the first tier of scows. The hawser between the two forward scows and two after scows parted and the starboard scow of the rear tier of the tow bumped against the forward part of the "Gulftrade," the blow being a glancing blow and a light one.

14. At the point of collision the width of the channel for vessels of the draft of the "Gulftrade" was about 250 feet while for the "Taurus" and her tow there was ample width of channel room and the two flotillas would have passed in safety if the "Taurus" had not sheered to her starboard, as before described and with her tow crossed over across the course of the "Gulftrade." There were no vessels in the vicinity of the collision which in any way interfered with the navigation of the two flotillas.

15. As a result of the collision Scow No. 18 capsized and although the life buoys were thrown from the steamer and efforts were made by the "Churchman" which after the collision had cast loose from the steamer in order to avoid collision with one of the scows, to save him, one man in charge of Scow No. 18 was drowned. As a result of the collision Scow 18 received some damage, and one of the other scows was slightly damaged, the amount of such damage is grossly exaggerated in the libel, but this claimant-respondent is unable to determine the exact amount and demands strict proof of the same.

After the collision the Scow 18 with the "Taurus" were on the starboard side of the "Gulftrade."

The said collision with the resultant damage was not due to any fault on the part of the "Triton" or of the respondent but was solely due to the fault, negligence and carelessness of the "Taurus" and those in charge of her and of her tows and those in charge of them, among others in the following respects:

As to the tug "Taurus":

1. In that she had no competent person in charge of her at the time.

2. In that she failed to navigate to the westward of the deep water channel which her light draft would have enabled her to do with safety.

3. In that she failed to adhere to the passing signals which were exchanged between the two flotillas.

4. In that she failed to hold her course so that the "Gulftrade" with her tugs could pass safely to the eastward of the said tug the scows which she had in tow.

5. In that the "Taurus" sheered with her tows to the starboard and across the course of the "Gulftrade," when the vessels were in close proximity to each other.

6. In that the "Taurus" failed to reasonably to reverse her engines and maneuver so as to avoid collision and all risk of collision.

And in other respects to be shown at the trial of this cause.

As to the said sand scows, including No. 18, 33 and 44:

1. In that they and none of them were in charge of a competent person.

2. In that they allowed the "Taurus" to tow them across the course of the "Gulftrade" and her tugs, and bring about the collision.

3. In that they allowed the "Taurus" to tow them into collision with the "Gulftrade."

4. In that the said scows failed to cast loose or cut their hawsers at the time the "Taurus" sheered to her starboard and across the course of the "Gulftrade."

And in other respects to be shown at the trial of this cause.

16. That all and singular the premises of this answer are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore this claimant-respondent prays that your Honorable Court will dismiss the libel in the within case, with costs to claimant-respondent.

INDEPENDENT PIER COMPANY,
By CLINTON SHEETS,
President.

HOWARD M. LONG,
Proctor for Claimant-Respondent.

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA, } *ss.*

CLINTON SHEETS, being duly sworn according to law, deposes and says that he is secretary of the Independent Pier Co., the claimant-respondent named in the foregoing answer, that he has read the said answer, and the facts stated therein are true to the best of his knowledge, information and belief.

CLINTON SHEETS.

Sworn to and subscribed before me this 7th day of August, 1924.

KATHERINE M. COLLINS,
(Seal) *Notary Public.*
Commission expires Feb. 21, 1927.

ANSWER OF GULF REFINING COMPANY, INC., OWNER AND CLAIMANT OF SS. "GULFTRADE."

(Filed Dec. 20, 1924.)

To the Honorable, the Judges of the said Court:

The answer of Gulf Refining Company, Inc., one of the respondents, and the owner and claimant of the steamship "Gulftrade," to the libel and complaint of Charles Warner Company against said steamship "Gulftrade" and said Gulf Refining Company, Inc., and others, in a cause of collision, civil and maritime, responds and alleges, upon information and belief, as follows:

First: Respondent and claimant admits that libellant is a corporation organized and existing under the laws of the State of Delaware, and having its principal office and place of business in Philadelphia, Pennsylvania, as alleged in article first of the libel. Respondent and claimant denies any knowledge or information sufficient to form a belief as to the remaining allegations contained in said article, and prays due proof thereof by libellant, if material.

Second: Respondent and claimant denies any knowledge or information sufficient to form a belief as to the allegations contained in article second of the libel, and prays due proof thereof by libellant, if material.

Third: Respondent and claimant denies any knowledge or information sufficient to form a belief as to the allegations contained in article third of the libel, and prays due proof thereof by libellant, if material.

Fourth: Respondent and claimant denies any knowledge or information sufficient to form a belief as to the allegations contained in article fourth of the libel, and prays due proof thereof by libellant, if material.

Fifth: Respondent and claimant admits the allegations contained in article fifth of the libel.

Sixth: Respondent and claimant admits the allegations contained in article sixth of the libel.

Seventh: Respondent and claimant is advised, believes and therefore avers that it is not required to

answer the allegations contained in article seventh of the libel, and neither admits nor denies the same.

Eighth: Respondent and claimant is advised, believes and therefore avers that it is not required to answer the allegations contained in article eighth of the libel, and neither admits nor denies the same.

Ninth: Respondent and claimant is advised, believes and therefore avers that it is not required to answer the allegations contained in article ninth of the libel, and neither admits nor denies the same.

Tenth: Respondent and claimant is advised, believes and therefore avers that it is not required to answer the allegations contained in article tenth of the libel, and neither admits nor denies the same.

Eleventh: Respondent and claimant avers that the allegations contained in article eleventh of the libel are in large part untrue or incorrectly stated, and the same are hereby denied except in so far as they may agree and accord with the true facts which are as follows:

At about 3 P. M. on October 1, 1923, the "Gulftrade," loaded with a cargo of oil in bulk, on a voyage from Port Arthur, Texas, to Girard Point, Philadelphia, and being then in the Delaware River below the mouth of the Schuylkill River, was met by the steam-tugs "F. A. Churchman" and "Triton" which had been engaged and had agreed to pilot, tow and transport the "Gulftrade" up the Schuylkill River to Girard Point and there dock her at a designated berth, with the masters of said tugs in full charge of such movement. The tug "F. A. Churchman" made fast on the "Gulftrade's" port

bow and the tug "Triton" made fast on the "Gulftrade's" port quarter. The masters of said tugs then came aboard the "Gulftrade" and onto her bridge where they, as masters of said tugs and agents of their owners, at once took full charge of said pilotage, towage and transportation movement, and continued there and thus in charge at all times until subsequent to the collision hereinafter mentioned. They then and thereafter exercised their independent judgments and gave all orders, including those hereinafter mentioned, for the movements and navigation of the "Gulftrade" and the tugs "F. A. Churchman" and "Triton," and all such orders given to the officers and crew of the "Gulftrade" were promptly and properly executed. Then and at all times thereafter until subsequent to the collision a few minutes later, the weather was clear, the tide was flood, and the wind was light and not a factor.

The "Gulftrade," thus in charge of said tugs and masters, and with her officers and crew properly stationed, proceeded up the Delaware River in the proper channel. Shortly thereafter the "Gulftrade" blew a whistle signal of one blast to the tug "Taurus" which was then proceeding in the same direction up the Delaware River but heading to enter the Schuylkill River and a considerable distance ahead of the "Gulftrade," with a hawser tow of four loaded but light draft barges made up in tow tiers of two barges each. The "Taurus" immediately answered with a like signal of one blast, thus assenting to the passing of the faster moving "Gulftrade" on the starboard hand of the "Taurus" and tow. The "Taurus" proceeded around the bend at the mouth of and into the Schuylkill River well ahead of the "Gulftrade." The "Gulftrade" then blew again a signal of one blast to the "Taurus" which the latter

immediately answered with an assenting signal of one blast. The "Gulftrade" continued at a moderate and proper speed, gradually overhauling the "Taurus" and tow, and maintained at all times a proper course as far over on the starboard or eastern side of the main ship channel as it was safe for a vessel of her draft to go, and a safe passing distance to the eastward of the course which the "Taurus" and tow were holding on the western side of the said main ship channel. When the "Gulftrade" was about to pass on the starboard hand of the "Taurus" and tow, and in proper position to safely do so, the "Taurus" and tow started to sheer toward the course of the "Gulftrade," whereupon the "Gulftrade" again blew a signal of one blast and immediately took all feasible precautions in an effort to avoid collision. But the "Taurus" and tow continued upon their improper sheer across the course of the "Gulftrade" until Barge No. 18, the starboard barge in the first tow tier, struck the stem of the "Gulftrade." Shortly thereafter the said Barge No. 18 capsized. The "Gulftrade" stood by and rendered such assistance as she could, after which she proceded to her berth at Girard Point.

Twelfth: Respondent and claimant denies each and every the allegations contained in article twelfth of the libel, and avers that, on the contrary, the said collision and all consequent injuries and damages were due solely to and caused wholly by the faults, carelessness, negligence and inattention to duties on the part of said tug "Taurus" and its tow, and those in charge of said tug and tow, in the following respects, *inter alia*:

As to the tug "Taurus":

1. In that she was not in charge of a competent master, pilot or other person.

2. In that she failed to keep a proper lookout.

3. In that she failed to navigate in accordance with the whistle signals exchanged with the "Gulftrade."

4. In that she unnecessarily and unduly crowded upon the course of the "Gulftrade."

5. In that she failed to keep her tow tailing properly behind her.

6. In that she sheered across the course of the "Gulftrade."

7. In that she caused or permitted her tow to sheer across the course of the "Gulftrade."

8. In that she caused or permitted Barge No. 18 to sheer to starboard and into collision with the "Gulftrade" on the starboard side of the channel.

9. In that she failed to take proper precautions to avoid the collision.

10. In other particulars to be shown at the trial.

As to the barges in tow of the tug "Taurus":

1. In that they were not respectively in charge of competent persons.

2. In that none of them kept a proper lookout.

3. In that they caused or permitted the tug "Taurus" to tow them across the course of the "Gulftrade" and so that Barge No. 18 collided with the "Gulftrade" on the starboard side of the channel.

4. In that they sheered to starboard so that Barge No. 18 collided with the "Gulftrade" on the starboard side of the channel.

5. In that they respectively failed to take proper precautions to avoid the collision.

6. In other particulars to be shown at the trial.

Thirteenth: Respondent and claimant admits the demand and non payment as alleged in article thirteenth of the libel. Respondent and claimant denies any knowledge or information sufficient to form a

belief as to the remaining allegations contained in said article, and prays due proof thereof by libellant, if material.

Fourteenth: Respondent and claimant admits that the steamship "Gulftrade" was within the admiralty and maritime jurisdiction of this Honorable Court at the time the libel was filed, as alleged in article fourteenth of the libel. Respondent and claimant is advised, believes and therefore avers that it is not required to answer the remaining allegations contained in said article, and neither admits nor denies the same.

Fifteenth: Respondent and claimant admits the admiralty and maritime jurisdiction of the United States and of this Honorable Court, as alleged in article fifteenth of the libel, but denies that all and singular the premises of the libel are true as averred in said article.

Sixteenth: All and singular the premises of this answer are true.

Wherefore, respondent and claimant prays that the said libel may be dismissed as against respondent and claimant and the said steamship "Gulftrade," with costs, and that this Honorable Court will otherwise right and justice administer in the premises.

GULF REFINING COMPANY, INC.,
By H. ALAN DAWSON,
Attorney.

BIDDLE, PAUL, DAWSON & YOCUM,
BURLINGHAM, VEEDER, MASTEN & FEAREY,
Proctors for Gulf Refining Company, Inc., Respondent and Claimant.

UNITED STATES OF AMERICA,
STATE OF PENNSYLVANIA,
CITY & COUNTY OF PHILADELPHIA, } *ss.*

H. ALAN DAWSON, being duly sworn according to law, deposes and says:

I am a member of the firm of Messrs. Biddle, Paul, Dawson & Yocum, proctors of record for Gulf Refining Company, Inc., the respondent and claimant named in the foregoing answer, and duly authorized to execute, verify and file said answer in behalf of said respondent and claimant.

I have read over said answer and know the contents and the allegations thereof, and the same are true to the best of my knowledge, information and belief. The grounds of my knowledge and the sources of my belief are statements and documents submitted to me by reliable persons in position to have knowledge of the facts.

The reason this verification is not made by said respondent and claimant is that it is a corporation and has no officer presently available within the district to so verify, but has duly requested and authorized me to make this verification.

H. ALAN DAWSON.

Sworn and subscribed to before me this 11th day of September, A. D. 1924.

H. MEANEY,
(Seal) *Notary Public.*

My commission expires April 22, 1925.

DEPOSITIONS.

(Depositions taken at the offices of Messrs. Conlen, Acker, Manning and Brown, 1800 Packard Building, Philadelphia, Pa., on Wednesday, January 27, 1926, at 3.30 o'clock P. M. before Jean C. O'Neill, notary public.)

PRESENT:

MESSRS. CONLEN, ACKER, MANNING AND BROWN by J. THURSTON MANNING, JR., ESQ., for the libellant.

MESSRS. BURLINGHAM, VEEDER, MASTEN AND FEAREY by H. ALAN DAWSON, ESQ., for the S. S. "Gulftrade" and HOWARD M. LONG, ESQ., for Gulf Refining Company, respondents.

(It was stipulated and agreed among the respective parties that the signatures hereto be waived and that the stenographic costs be taxed as a part of the costs of the cause.)

EVIDENCE ON BEHALF OF THE LIBELLANT.

HOWARD TENNYSON GEDDES, having been duly sworn, was examined and testified as follows:

By Mr. Manning:

Q. What is your full name?
A. Howard Tennyson Geddes.
Q. Where do you live?
A. Point Pleasant, Pennsylvania.
Q. What is your occupation?
A. Pilot.
Q. By whom are you employed?
A. Charles Warner Company.
Q. How long have you followed the water?
A. About five years and a half.
Q. Five years and a half?
A. Tide water.
Q. In what boats; what type of boats?
A. Tugboats.
Q. You are on the "Torres"?
A. Yes, sir.
Q. As pilot?
A. Yes, sir.
Q. How long have you been on the "Torres" in that capacity?
A. About two years and a half.
Q. Were you on her in that capacity on October 1st, 1923?
A. Yes, sir.
Q. On October 1st, 1923, what time of the day did you come on duty?
A. 12 o'clock.

Q. And where was the tug at that time?

A. Mouth of the Mantua Creek, New Jersey.

Q. What did you proceed to do when you came on duty?

A. I made up the ——

Q. By the way, who was in command of the tug at that time?

A. Captain Marvil.

Q. You mean he was captain of the tug at that time?

A. He was a captain of the tug, and I relieved him at 12 o'clock.

Q. He turned in?

A. He turned in; yes, sir.

Q. What did you proceed to do at that time?

A. Made up a tow of four barges.

Q. What were those barges?

A. Sand lighters, Number 44, 33, 53, 18.

Q. How was that tow made up?

A. Number 18 on the starboard bow, 53 on the port bow, 33 on the starboard stern, and 44 on the port stern.

Q. Made up in two tiers, then?

A. Two tiers.

Q. How were these barges made fast to the tug?

A. By means of two hawsers, five inch lines.

Q. From where to where?

A. From the stern bitts of the tugboat to each outside corner of each outside barge.

Q. To the starboard bow of the starboard barge of the first tier, and the port bow of the port barge of the first tier; is that correct?

A. That's correct.

Q. What was the length of those hawsers, as near as you can say?

A. About 100 feet.

Q. What is the length of the "Torres"?
A. 65 feet.
Q. What were the lengths of those barges?
A. About 120 feet.
Q. Each barge about 120 feet?
A. Each barge about 120 feet.
Q. With the tow made up that way, where were you bound for?
A. I was bound for 49th Street, to discharge the barges at 49th Street and Bainbridge Street, Schuylkill River.
Q. Describe your course from Mantua Creek over?
A. I left Mantua Creek, and headed her over—I laid a court over for Fort Mifflin piers, passing Fort Mifflin piers about halfway between the new channel and the end of the piers. I then hauled her over westwardly to make the mouth of the Schuylkill River, following the stream west of the channel.
Q. The west line of the channel?
A. The west line of the channel; yes, sir.
Q. Were your engines rung up?
A. Yes, sir.
Q. All the way over?
A. Yes, sir.
Q. What was the condition of the tide?
A. Flood.
Q. How was the weather?
A. Clear, westerly winds.
Q. Wind strong enough to have any effect at all?
A. No, sir.
Q. When did you first notice the "Gulftrade"?
A. When I was around the upper end of Hog Island, I noticed her about a mile down the river—a steamship.
Q. You did not know what she was at that time?
A. I didn't know what steamship she was at that time.

Q. When did you first see the tugs "Triton" and "Churchman"?

A. In passing into Mifflin, they were hanging on the Mifflin piers.

Q. When did you first hear a signal from the "Gulftrade"? I mean, where was your boat when you first heard a signal from the "Gulftrade"?

A. I was near the mouth of the Schuylkill.

Q. What signal did you get?

A. One prolonged blast of the steam whistle.

Q. Did you answer it?

A. Yes, sir.

Q. With what?

A. With one prolonged blast of the steam whistle.

Q. Did you at that time look back to see the "Gulftrade"?

A. Yes, sir; I took a glance back.

Q. Where was she then?

A. She was around Mifflin—this side of Fort Mifflin.

Q. About how far astern of you would you say she was?

A. Around a quarter to a half mile.

Q. How did she bear?

A. I don't just remember her exact position at that time.

Q. What was the position of your tug at that time in relation to the black buoy at the mouth of the Schuylkill River?

A. At the time I received my first signal?

Q. Yes?

A. I was quite a distance below the black buoy from the mouth of the Schuylkill River.

Q. After receiving that signal and answering it, what did you do, if anything, with respect to your wheel?

A. I hauled the tug and the tow under the westerly shore as close as possible to make the mouth of the Schuylkill River, keeping them out of the tide as much as possible.

Mr. Long: What was the question?

(Question read.)

Mr. Long: I ask that the answer be stricken from the record as not responsive to the question.

By Mr. Manning:

Q. Did you turn into the Schuylkill following that whistle?

A. Yes, sir.

Q. And in rounding into the Schuylkill, how did you lift the black buoy?

A. I lifted the black buoy about 20 or 25 feet from my port side.

Q. As you rounded that buoy, did you make any change in the wheel, when you got your tow past the buoy?

A. After the tow was clear of the buoy, going into the mouth of the Schuylkill, the stern barges swung out toward mid-channel. I then ported my wheel for an instant, bearing my tug to the starboard.

Q. What was the purpose of that?

A. The purpose of that was to throw the stern tow to the westerly shore; to pull them in out of the mid-channel.

Q. How long did you keep your wheel to port?

A. About a half a minute.

Q. And then, what was your next movement of the wheel?

A. I starboarded my wheel to haul her back on the original course.

Q. Did you receive any further signal from the "Gulftrade"?

A. I received another prolonged blast of the steam whistle.

Q. Where were you then? Was that before or after you rounded the black buoy?

A. If I remember, it was after the tow had pulled clear of the black buoy.

Q. Did you answer that signal?

A. Yes, sir.

Q. What did you answer that signal with?

A. One prolonged blast of the steam whistle.

Q. Did you at any time observe the "Gulftrade;" its position?

A. Yes, sir.

Q. Where was she at that time with respect to your tow?

A. She was right under my stern, on my starboard stern.

Q. About how far off?

A. I don't remember the exact distance

Q. Well, approximately; as near as you can recollect? If you are not sure, say so?

A. I am not sure.

Q. By the way, had you made any change in your engines up to that time?

A. No, sir.

Q. They were still running full speed ahead?

A. Full speed ahead.

Q. At the time you observed the "Gulftrade," did you also see the tugs "Triton" and "Churchman?"

A. Yes, sir.

Q. Where were they?

A. The "Churchman" under the port bow, and the "Triton" on the port quarter.

Q. Of the "Gulftrade?"

A. Of the "Gulftrade."

Q. Did you observe the position of your tow at that time with respect to its following the tug; its position with respect to the shore line?

A. Yes, sir; following the westerly shore line.

Q. Was it following the tug?

A. Yes, sir.

Q. Did those barges, by the way, have any rudders or other means of steering on them?

A. No, sir.

Q. Did they have crews on them?

A. One man on each barge.

Q. Did you look again at the "Gulftrade?"

A. I noticed the "Gulftrade" next when she was about Barge No. 33.

Q. What was her heading then?

A. She was steering to the westerly shore.

Q. How much water was there between you and the western bank at that time? I do not mean the depth of the water, but I mean the width of the water?

A. I just don't remember the exact width of the water at that time; approximately about 75 or 100 feet.

Q. Do you mean to the bank or to the edge of the channel?

A. To the bank.

Q. And what was the position, or the heading, rather, of your tug and tow in relation to the channel line?

A. I was running parallel with the westerly channel line.

Q. How was your wheel at that time?

A. About amidships, as near as I can remember.

Q. When you observed the "Gulftrade," as you said, about to hit the Barge 33, what did you do?

A. Told the master.

Q. Where was he?

A. Asleep.

Q. Where?

A. In his berth, aft of the pilot house.

Q. Did he answer your call?

A. Yes, sir; immediately.

Q. What did he do that you observed?

A. He ran aft out of his cabin.

Q. Did you hear any signals blown by your tug then?

A. Yes, sir; four rapid blasts, danger signal.

Q. What happened then?

A. By that time the "Gulftrade" had struck Number 33.

Q. Where did she strike Number 33?

A. On the starboard side, just hit up alongside of her.

Q. What was the effect of that on 33?

A. Shoved 33 and 44 over to the westerly bank—on the westerly bank.

Q. Then, what effect, if any, did it have on the tow-lines.

A. It parted the tow-lines.

Q. Between the tug and the barges?

A. Between the barges.

Q. And then, what did the steamer do?

A. The steamer struck Number 18 in the stern.

Q. What effect, if any, did that have on the tow-line from the tug to the two leading barges?

A. That broke the tow-line from the tug to the leading barges, and also broke the breast line.

Q. What became of 18 then?

A. 18 went to the "Gulftrade's" starboard bow.

Q. What did you do with the tug then?

A. The tow-lines being broken, I hauled the wheel hard aport, after I had rung up.

Q. Then, what did you do?

A. The captain came in, and relieved me.

Q. What did you do after the captain relieved you at the wheel?

A. I went below and got a life-line.

Q. What for?

A. To pick up the captain of the Barge 18, because after I left the pilot house, I saw she had a dangerous lean to starboard.

Q. What was the movement of the tug following that?

A. He backed and filled her a number of times to get her around in the channel, and get her headed out.

Q. Then, what did he do?

A. He went back to the Barge Number 18 to pick him up.

Q. Pick who up?

A. Pick the captain, because the barge had already capsized.

Q. Where was the captain at that time?

A. The captain had submerged at that time.

Q. Did you get him?

A. No, sir.

Q. Did you pick up anybody else?

A. We picked up a man off the life-ring.

Q. Where did he come from?

A. The "Gulftrade."

Q. What, if anything, did you observe with respect to the movements of the tug "Churchman" immediately before the collision?

A. The steam tug "Churchman," immediately before the collision, left go of his lines, and backed out.

Q. He had been on the port bow of the "Gulftrade?"

A. Yes, sir.

Q. Had you observed whether or not the engines of the "Churchman" were in use prior to their letting go the lines?

A. No, sir; I have no knowledge of that.

Q. What was the purpose of having the "Churchman" on the port of the "Gulftrade" rounding into the Schuylkill River at that time?

Mr. Long: Objected to as incompetent, irrelevant and immaterial.

A. To hold her bow over to the easterly. When her bow struck that slack water in the Schuylkill and her stern out to the flood tide of the Delaware, it would have a tendency to sheer her to the westerly?

Q. To sheer what?

A. To sheer the "Gulftrade."

Q. The effect of the flood tide on her stern would be to set that which way?

A. It would set that to the east.

Q. You are speaking of the flood water in the Delaware and the slack water in the Schuylkill. How long have you been navigating around the entrance of the Schuylkill River there?

A. About five and a half years.

Q. What do you mean when you refer to the flood water in the Delaware and the slack water in the Schuylkill? Does the flood tide run into the Schuylkill, too?

A. Very little. It may in the first hour or hour and a half be flood tide, and then it is slack.

Q. What is the effect of that at the mouth of the Schuylkill there?

A. It creates an eddy there.

Q. By the way, what happened to the "Gulftrade" after the collision?

A. She went on up the Schuylkill.

Q. Did she stop at all?

A. No, sir.

Q. What, if any, damage did you observe to any of the barges?

A. 18 had already capsized. I couldn't determine what damage was done to her. The Barge Number 33—her sheer point was lifted, and was leaking; that is, the first plank below the water line. She had a large leak under her starboard side. I beached her on the east side of the river, and slid her cargo overboard, and caulked the leak.

Q. What about the 44 and the 53? Did you observe any damage to them?

A. No, sir.

Q. What was done with them?

A. 44 was grounded a little bit on the west side of the river. As the tide raised, she flooded.

Q. What did you do with those two barges?

A. We left them lay there, while we assisted the 33. They dropped their anchor.

Q. After you assisted the 33, did you take them on to their destination?

A. Yes, sir.

Q. Was it before or after the second exchange of whistle signals that the "Churchman" dropped her lines and backed out?

A. Before or after?

Q. The second exchange of signals.

A. After.

Q. How long before the collision occurred would you say that happened; that is, the "Churchman" backing out?

A. I don't recall that.

Q. You stated that after you got your tow clear of the black buoy, you first ported your helm for about a half minute and then starboarded?

A. Yes, sir.

Q. So as to straighten her out, and when the collision occurred—just before the collision occurred your wheel was about amidships?

A. Yes, sir.

Q. How long after you changed your helm from port to starboard would you say the collision occurred?

A. I don't remember, but a very short period of time.

Q. Had your helm been to starboard long enough for the tug to answer that, prior to the collision?

A. To answer the port helm?

Q. Yes?

A. Yes.

Q. In answering the starboard helm, had your helm been to starboard long enough for the tug to have answered it?

A. Yes, sir.

Q. Had it followed that movement of the wheel?

A. Yes; it followed it.

Q. So much so, you had an opportunity to straighten her out, and get your wheel amidships prior to the collision?

A. Yes, sir.

Q. From the time that you put your helm to starboard until up to the time of the collision was your helm ever after that ported?

A. I don't remember that. This was over a very short period of time, from the time I straightened her up until the collision.

Q. I do not know whether you understand my question. You have testified that you put your helm to port——

A. Yes, sir.

Q. To throw your barges into the westerly line after you rounded the black buoy?

A. Yes, sir.

Q. That you held it there for about a half a minute, and then put your helm over to starboard. From that time up until the collision, did you ever again port your helm?

A. Not to any extent, no sir; not to alter her course.

Q. Just prior to the collision, do you know what your compass heading was?

A. No, sir.

Q. Could you give us the compass heading of the "Gulftrade?"

A. No, sir.

Q. How was it heading with respect to the line of the channel?

A. Parallel with the westerly line.

Q. And the heading of the "Gulftrade" with respect to the channel line?

A. She was heading to the westerly.

Q. When the "Gulftrade" came into collision with the 33, what was the angle of the "Gulftrade" as compared to the line of the 33?

(No answer.)

Q. Taking this line which I have drawn (indicating)—a more or less straight line down the middle of the page, to indicate the direction of the channel merely, no particular point in it, and taking the smaller boat as representing the 33, will you place that in the position she was in with respect to the line of the channel, and place the larger boat in the position that the "Gulftrade" was in with respect

to the line of the channel at the time of the collision?

A. Barge 33 is the smaller boat?

Q. 33 is the small boat and the big one is the "Gulftrade"

A. You mean you want this one to indicate Barge 33? (Indicating.)

Q. Yes.

A. That's as near as I can remember. (Indicating.)

Mr. Manning: I have marked the small one on this diagram "Number 33" and the large one "Gulftrade," and ask that they be marked for identification Libellant's Exhibit 1 of this date.

(Paper in question so marked.)

Cross-examination.

By Mr. Long:

Q. How old are you?

A. Now?

Q. Yes.

A. 23.

Q. When were you 23?

A. The 31st day of last January.

Q. What license do you hold?

A. First-class pilot of the Delaware between Delaware and Bordentown, New Jersey?

Q. How long have you held that license?

A. About two years and a half.

Q. Do you know just when it was granted you; what date?

A. I think it was April 27th, 1923. I will have to look that up.

A. Have you been on the "Torres" ever since you got your license?

A. About a month after I got my license.

Q. Were you on the "Torres" before you got your license?

A. No, sir.

Q. Have you navigated any vessels of the size of the "Gulftrade" up the Schuylkill River?

A. No, sir.

Q. Never have?

A. No, sir; never piloted them up. I have worked on tugs towing them up.

Q. But you were never in charge of a vessel?

A. Never in charge, no sir; never had full charge.

Q. So, you do not know what width of the channel for vessels drawing twenty-seven feet of water there is, do you?

A. There's about 250 feet.

Q. You have given the length of these sand scows you were towing. What is their depth?

A. They will vary from 8 to 10 feet.

Q. On the day of the collision, what was the draft of your tug, the "Torres?"

A. About eight feet.

Q. How deep did you have these scows loaded, so we can get their draft?

A. I just don't recall what that was, what barge 33 will draw when she is full loaded. She was full loaded.

Q. Would it be around 8 feet?

A. Between 8 and 9 feet, I would judge.

Q. How much freeboard did the 33 have on the day of the collision?

A. I don't remember that to the inches.

Q. I mean, about how much? Did she have one foot, or two feet, or six inches, or what?

A. About five or six inches.

By Mr. Manning:

Q. That is, amidships?
A. That's amidships, extreme amidships.

By Mr. Long:

Q. Was that true of the other barges? Did they have about the same freeboard?
A. Yes; as near as I can remember.
Q. What width of channel is there going up the Schuylkill there, after you pass between the red and black buoys for vessels of the draft of the "Torres" and the draft of these sand scows?
A. At that stage of the tide, I would judge there was about 300 feet.
Q. Is it not as much as 800 feet?
A. It's very deceiving, the exact amount of feet there.

By Mr. Dawson:

Q. What did you say—deceiving?
A. Feet on water.

By Mr. Long:

Q. You would not want to say you were anywhere exact, when you said there was about 300 feet width of channel there for a vessel of the draft of the "Torres" and the scows on the day of the collision there? If you do not understand the question, if I did not make it clear, we will read it over.

Mr. Long: Read the question.

(Question read as follows: "Q. What width of

channel is there going up the Schuylkill there, after you pass between the red and black buoys for vessels of the draft of the "Torres" and the draft of these sand scows?")

By Mr. Long:

Q. As they were loaded the day of the collision?

Mr. Manning: The witness has already answered, to the best of his recollection about 300 feet.

Mr. Long: And I asked him if he is positive of that.

Mr. Manning: He said he was not positive.

By Mr. Long:

Q. It might be much more than 300 feet, might it not?

A. Sir?

Q. It might be much more than 300 feet?

Mr. Manning: I object to that question as incompetent, irrelevant and immaterial. The signals having been exchanged with the "Gulftrade" to pass on the starboard side of the tow, the only question is to get the distance or additional width on the port side of the channel.

Mr. Long: Will you read the question?

(Questions read as follows: "Q. What width of channel is there going up the Schuylkill there, after you pass between the red and black buoys for ves-

sels of the draft of the "Torres" and the draft of these sand scows? Q. As they were loaded the day of the collision?")

By Mr. Long:

Q. And under the tidal conditions that existed that day?

By Mr. Manning:

Q. Go ahead and answer the question if you can?
A. I would judge from three to four hundred feet.

By Mr. Long:

Q. That is, three hundred to four hundred feet?
A. Three hundred to four hundred feet. I couldn't say without taking a chart, and measuring it.
Q. Have you ever sounded going down there to determine the width of that channel?
A. Yes, sir; I sounded how close I could come to the shore, but the exact distance from shore to shore I couldn't give that without taking a chart.
Q. You spoke about these hawsers being 100 feet. Did you mean the distance from the "Torres's" stern to the bows of her head barges was about 100 feet?
A. Yes, sir.
Q. What was the length of the hawser from the stern of the head barges to the bows of the stern barges?
A. Maybee three to five feet.
Q. Three to five feet?
A. Yes, sir.
Q. One thing that occurs to met at this time, the

man that was picked up from that life buoy was a man who had jumped overboard from the "Gulftrade" trying to save the captain?

A. Trying to save the captain of the 18.

Q. And you spoke about the "Gulftrade" not stopping. As a matter of fact, your tug got across the "Gulftrade's" bow?

A. She crossed the "Gulftrade's" bow after the collision.

Q. She was to the "Gulftrade's" starboard?

A. She came back to the "Gulftrade's" starboard side.

Q. And the 18 did the same thing?

A. The 18 was on the starboard, the starboard side of the "Gulftrade's" bow.

Q. You spoke about porting the wheel of your tug. How much did your tug swing to starboard under the effect of that port wheel?

A. About fifteen or twenty feet.

Q. How fast were you going?

A. What do you mean, outside of the Schuylkill or in the Schuylkill.

Q. At the time you ported your wheel

A. I wasn't making over three miles an hour.

Q. You were in slack water then?

A. Slack water; yes, sir.

Q. You said you held your wheel to port about a half minute?

A. Yes, sir.

Q. Did you hard aport your wheel?

A. No, sir; just enough to steady my barges.

Q. How many turns of your wheel did you give?

A. I don't remember that.

Q. More than one?

A. I couldn't remember that; just a matter of sub-consciousness that is, to satisfy yourself.

Q. After porting your wheel for a half minute, you say you put your wheel to starboard?

A. Yes, sir.

Q. How much did your tug swing under the effect of that starboard wheel—swing to port?

A. How much did she swing under the wheel of that starboard wheel?

Q. How much did she swing to port under the effect of that starboard wheel?

A. Back to her original course; I would say about fifteen or twenty feet.

Q. How long did you hold your wheel to starboard?

A. Just sufficient to steady my barges to the westerly line.

Q. Approximately just a few seconds?

A. Well, a half a minute.

Q. Of course, that is just an estimate? You were not looking at a clock, or anything like that?

A. No, sir; I didn't check the time.

Q. What part of the "Gulftrade" came into collision with the 33?

A. Her port bow.

Q. That was the first——

A. The first barge struck.

Q. The barge she struck. About how far aft from her stem did she strike; that is, on the "Gulftrade?"

A. I couldn't answer that question, sir. I only took a birdseye view of the situation at that time.

Q. How far forward from the stern of the 33 did she strike?

A. Right aft amidships—not right there, aft of amidships; between amidships and the stern.

Q. The barge is 120 feet long. Would you say some 30 or 35 feet forward of the stern?

A. Approximately that; yes.

Q. After you had answered this first signal from the "Gulftrade" with this one whistle, what did you consider was the duty of your tug and tow; what should they do?

A. To keep to the westerly side of the channel, in view of the "Gulftrade" passing them.

Q. They were to hold their course, were they not?

A. Hold their course and speed.

Q. No question about that, is there, in your mind? I say, you are positive about that, are you not?

A. That is, the "Torres" was to hold her course —not at that particular point, no, sir; as there is a bend in the channel—at the time I received that first signal.

Q. You spoke about the "Gulftrade" sheering toward the western shore just before the collision. Will you tell us how much in points she changed her course toward the western shore, when she made this sheer?

A. No, sir; I couldn't tell you how much she altered her course.

Q. You were looking at it, were you not?

A. From time to time; yes, sir.

Q. You were looking at it close enough, so that you were able to come here today and say she did sheer?

A. Yes, sir.

Q. Can you tell us how much she did by degrees?

A. As to the degree on the compass, I couldn't say.

Q. Was it much or little?

A. It was very—well——

Q. How much in points?

A. I couldn't just say how much it was in points, as you don't use your compass going in there. It

may have been one point, or a point and a half, or two points.

Q. That is your estimate, is it?

A. Yes; as we don't use our compass in there. That's just a very rough guess. We don't use the compass going in there.

Q. I am talking about the change of course of the "Gulftrade" when you say she sheered. She was coming up there on a course. Now, you say just before she hit, she sheered; is that what you mean to say?

A. Sir?

Mr. Long: Read the question.

(Question read.)

By Mr. Long:

Q. You have testified the "Gulftrade" was coming in there on a course. Now, just before she hit 33, you say she sheered. That is the testimony I understood you gave on your direct examination?

A. Yes, sir.

Q. How much did she sheer in points; do you know?

A. I don't know how much she sheered in points.

Q. How much did she sheer in feet, would say?

Mr. Manning: That is objected to as being an impossible question to answer.

A. I couldn't describe the feet.

By Mr. Long:

Q. So, you cannot tell the extent of that sheer, yourself?

A. The extent of that sheer; no, sir.

Q. All you can tell me is she did sheer; is that it?

A. Yes, sir.

Q. I understood you to say after you got a one-whistle signal from the "Gulftrade" first, you answered that with one?

A. Yes, sir.

Q. Then, you got another one whistle signal from the "Gulftrade," and then you said that other one-whistle signal came after the tow had pulled clear of the black buoy?

A. Yes, sir.

Q. Then, you answered that whistle signal, did you not, with one whistle?

A. One prolonged blast of the steam whistle.

Q. Just before the collision, did you hear the "Gulftrade" blow another blast of one whistle? That would be the third. Did you hear a third blast from the "Gulftrade" just before the collision?

A. No, sir.

Q. Did you hear her blow any whistle when she hit?

A. No, sir; as our whistle was blowing about ten feet from my head.

Q. You were speaking about the "Churchman" backing out—casting off her lines, and backing away from the port bow of the "Gulftrade;" that was immediately before the collision?

A. Yes, sir; the pilot on the "Churchman" stayed as long as he could.

Q. You are still on the "Torres," are you?

A. Yes, sir.

By Mr. Dawson:

Q. At the time your tow swung out to the channel, and you had ported your helm, in order to

straighten the tow, you then were at about the black buoy, were you not?

A. Yes, sir; just passing the black buoy.

Q. And at that time your tow swung out into about mid-channel?

A. The tow swung out into mid-channel or near mid-channel.

Re-direct examination.

By Mr. Manning:

Q. With respect to the extent of the "Gulf-trade's" sheer, you stated you could not say in feet or points how great that sheer was. Would you a slight sheer, or a considerable sheer, or a big sheer, or how would you describe that?

Mr. Long: I object to that on the ground that the witness has already said he does not know.

Mr. Manning: In feet or points; yes.

Mr. Long: He said he could not say the extent of the sheer.

Mr. Manning: In feet or points; yes.

Mr. Long: He has already said all that he can say was that she sheered.

A. A considerable sheer.

By Mr. Manning:

Q. Mr. Dawson asked you about your tow swing-

ing out to mid-channel. Just how far out had your tow swung, as far as you can recollect?

A. What part of the tug swung?

Q. Yes?

A. The stern of the stern barges and tow swung out near mid-channel.

Q. Which side of the tow?

A. The starboard side?

Q. Would you say that the starboard stern corner——

A. Yes.

Q. —of the stern dredge passed or did not pass the mid-channel mark?

A. I would say about the mid-channel mark.

Q. About the mid-channel mark?

A. About the mid-channel mark.

Q. What was the position of the tow at that time with respect to passing the black buoy—the stern of the stern barges at that time with respect to passing the black buoy?

A. That was while the tow was passing the black buoy.

Q. At the time of the collision, what would you say was the distance between the port side of the port stern barge and the bank?

Mr. Long: Which one?

Mr. Manning: The port bank, of course.

Mr. Dawson: Which barge?

Mr. Manning: Port stern barge.

Mr. Dawson: Port stern barge of the port bank?

A. 30 feet.

By Mr. Manning:

Q. What was the width of those barges?
A. 26 to 28 feet.

Cross-examination.

By Mr. Long:

Q. When you said the bank there, did you mean the bank of the river, the land?
A. The shore.
Q. That is, the solid ground?
A. Solid ground jetty.
Q. You have described the sheer of the "Gulftrade" as a considerable sheer. That does not mean very much, when you come to put it down in this record. Can you tell me that sheer in feet now or in points.
A. No, sir; I don't remember that. It has been too long ago.
Q. Is that the best you can say, a considerable sheer?
A. That would be the best I could say.
Q. You say it is too long ago to remember. You have been able to remember the distance that you were from the bank at the time of the collision?
A. Well, I can recollect that from more by the width of a barge. It is easily determined by the width of one of our barges or the width of two of our barges more than it is by the sheer of a ship.
Q. Did this steamer sheer as much as the width of one of your barges?
A. As much as the width of one of our barges?
Q. Yes?
A. Well, very near.

Q. And the width of the barge is 26 feet, you say?

A. Yes, sir—possibly not quite that much. I can't say the exact extent of that.

Q. And this was immediately before she hit 33, was it?

A. What was immediately before?

Q. This sheer was immediately before the "Gulftrade" hit 33?

A. That instant, yes; or a half a minute.

By Mr. Dawson:

Q. What is the distance from the black buoy into the western shore, the high ground that you call the jetty?

A. From the black buoy in?

Q. Yes.

A. It isn't over 20 or 25 feet, about the width of the barge.

PAUL MARVIL, having been duly sworn, was examined and testified as follows:

By Mr. Manning:

Q. What is your name, Captain?

A. Paul Marvil.

Q. How old are you?

A. 27.

Q. Where do you live?

A. Gloucester, New Jersey.

Q. How long have you been following the water?

A. Ten years.

Q. On what class of boats?

A. Mostly tugs.

Q. What papers do you hold?

A. First-class pilot from Bombay Hook to Philadelphia.

Q. How long have you held those papers?

A. Since 1920.

Q. What is your present occupation?

A. Master of the tug "Hartford."

Q. What was your occupation on October 1st, 1923?

A. Master of the tug "Torres."

Q. Belonging to what?

A. Beg pardon?

Q. Belonging to whom?

A. Charles Warner Company.

Q. Does the "Hartford" also belong to the Charles Warner Company?

A. Yes, sir.

Q. Captain, what time did you go off duty on October 1st?

A. Why, I judge somewhere around 12.30 or 1 o'clock.

Q. What did you do then?

A. I went into the cabin, and went to sleep.

Q. When did you next wake up?

A. When the mate called me.

Q. Where was your tug then?

A. Why, in the mouth of the Schuylkill River.

Q. What did the mate say to you when he called you?

A. He told me to get up and look around; he thought probably there would be a collision.

Q. What did you do?

A. I got up, and looked out the window of the pilot house, and then the other. I couldn't see much. I ran aft.

Q. What did you do when you got out of the house?

A. I seen the "Gulftrade" coming into the mouth of the Schuylkill River.

Q. Where was the "Gulftrade" with respect to your tow?

A. Well, she was coming then—well——

Q. Was she aft of your tow?

A. Yes; she was aft of the tow.

Q. How was your tow standing with respect to the line of the channel?

A. We were coming in, hugging the western shore.

Q. How was your heading with respect to the line of the channel?

A. Why, straight.

Q. How was the heading of the "Gulftrade" with respect to the line of the channel, as you saw it?

A. Why, coming more towards the stern of the barges.

Q. Was she directly aft of you, or off to the port or starboard?

A. She was a little to the starboard.

Q. And she was heading, also, with the channel—was she heading straight with the channel?

A. Not exactly.

Q. How was it, to port or starboard?

A. Well, she was headed more to the west of the channel.

Q. About how far off would you say she was from your tailing barge—her bow from your tailing barge

A. Well, I judge about 50 feet, probably.

Q. How was she heading with respect to your barge?

A. Then she was heading right for the stern of the barges?

Q. What did you do?

A. Well, I ran to the whistle cord, and I gave four blasts of the whistle, the danger signal. Then, I went aft again.

Q. Whereabouts do you keep that whistle cord; in the pilot house?

A. No; right to the smoke stack.

Q. What happened after that?

A. By that time the "Gulftrade" had struck number 33, I should judge.

Q. 33 was what barge in the tow?

A. She was on the starboard side.

Q. How many barges in your tow?

A. Four.

Q. Made up in how many tiers?

A. Two.

Q. Of two each?

A. Two each.

Q. Which tier was the number 33 in?

A. She was in the stern tier.

Q. Starboard barge in the stern tier?

A. Yes, sir.

Q. What was the effect on 33 and the tier alongside of her when the "Gulftrade" hit 33?

A. When the "Gulftrade" hit 33, she just knocked off to one side, and beached number 44, and come up and hit number 18.

Q. Where did she hit 18?

A. Somewhere around amidship in the stern.

Q. What was the effect of that on the towing lines?

A. That parted all the lines, both on the tug and the barges.

Q. What became of the 18 then?

A. The 18—when she struck 18, she just went up and drifted off on the starboard side of the ship, and turned over.

Q. What did you do when she hit 18, and broke the towing lines?

A. I waited until the men pulled the lines in. Then, I run into the pilot house, and told the mate I had charge.

Q. What did you do?

A. Put the helm hard aport, and come around, and tried to save the drowning man.

Q. Who was he?

A. Captain Knowles.

Q. Where did he come from?

A. Bethel, Delaware.

Q. No; I mean what boat was he on?

A. Number 18.

Q. What did she do; capsized, did you say?

A. Capsized.

Q. How did you go around the bow of the "Gulftrade?"

A. Run around the bow of the "Gulftrade."

Q. Did the "Gulftrade" stop?

A. No, sir.

Q. How were you able to cross her bow if she did not stop?

A. I had enough headway to come around ahead of her.

Q. Did you get Knowles?

A. No, sir.

Q. He sunk before you reached him?

A. Yes, sir.

Q. But you picked up somebody else?

A. Picked up one of the men of the "Gulftrade."

Q. What did he do?

A. He jumped from the bridge to try and save the drowning man.

Q. What part of the "Gulftrade" hit 33?

A. I should judge kind of on the bluff of her bow.

Q. How far aft would you say it was from her stem?

A. 15 or 20 feet.

Q. Which bow of the "Gulftrade?"

A. Port bow.

Q. What part of the "Gulftrade" hit 18?

A. The bow.

Q. The stem?

A. Yes, sir.

Q. What was the number of the barge alongside of the 18?

A. Number 53.

Q. What happened to her?

A. Why, she drifted off one side, and I believe he let go the anchor.

Q. What did you do after you picked up the man from the "Gulftrade?"

A. Why——

Q. Personally, I mean? What did you personally do?

A. I put the man on the "F. A. Churchman," I believe—well, the "Churchman" and I come together there, alongside, and I put the man on there, and give the mate the boat; told him to take charge, and I would go and telephone, and report to the office.

Q. How did you get to a point to telephone?

A. Why, on the "F. A. Churchman."

Q. It took you away from the scene at that time?

A. It took me away from the scene at that time; yes, sir.

Q. When you first came out and observed the "Gulftrade," where did she have her tugs?

A. The "F. A. Churchman" on the port bow, and the "Triton" on the port quarter.

Q. Did the "Churchman" continue on the port bow up to and including the collision?

A. He stayed there until he had to leave to go.

Q. What did he do then?

A. He just backed clear of the barges alongside of the ship until the ship cleared. Then, he come out and tried to pick up the man himself.

Q. He let go his lines to the "Gulftrade" before he got to the barges?

A. Well, he was right up to the barges.

Q. But aft of them?

A. Yes, sir.

Q. Did you hear any whistle signals, other than the four blast signal which you blew yourself?

A. No, sir.

Q. You knew nothing of the matter until the mate called you?

A. No, sir.

Q. You were asleep up until that time?

A. Yes, sir.

Q. How far off the west bank was the port side of your barges immediately before the collision, if you noticed?

A. The port side of the barges?

Q. Yes?

A. Oh, I should judge not over 30 feet.

Q. That was immediately before the collision?

A. Yes, sir.

Q. How soon after you left the "Churchman" did you return to the scene of the collision?

A. About three-quarters of an hour.

Q. Did you come back on the "Churchman?"

A. Yes, sir.

Q. Then went on board your own tug?

A. Yes, sir.

Q. Where was the 18?

A. The 18 was somewhere right around the red buoy; I think she was a little on the inside of the

red buoy, going into the mouth of the Schuylkill River, capsized.

Q. Was she beached then?

A. Well, not exactly beached. I believe her anchor held her.

Q. And she was capsized, was she?

A. Yes, sir.

Q. Where was the 33?

A. The 33, when I got back, was on the eastern side of the channel, up on the beach.

Q. Did you not see her about there, then?

A. No; I didn't see her about there.

Q. Where was the 44?

A. The 44, she was hanging on the number 533 then, I should judge.

Q. Was she still aground, or had they got her off?

A. Why, they pulled her off.

Q. She was off?

A. Yes.

Cross-examination.

By Mr. Dawson:

Q. When the mate called you, you were asleep in your room, were you?

A. Yes, sir.

Q. Where is that with respect to the pilot house?

A. It is joined right to the pilot house, just a partition.

Q. Did you have to dress?

A. I didn't turn in, as I ordinarily do; I just laid down on the locker.

Q. The mate called you at that time because he thought there was going to be a collision?

A. Yes, sir.

Q. You went out on deck, after he told you that?

A. I went to the pilot house, and looked; that is, first on one side, and then on the other, and I ran aft.

Q. Did you descend to the main deck to go aft, or did you go aft on the upper deck?

A. On the upper deck.

Q. After you got aft, and after first going to the pilot house and looking around, you saw the "Gulftrade" astern about 50 feet off your starboard quarter?

A. About.

Q. How long did you stand there, looking at her?

A. Well, I couldn't be able to say, because it all happened in an instant.

Q. Could you give no estimate of the time; was it as much as a minute, or was it a matter of a second?

A. Not over a minute.

Q. Not over a minute?

A. No, sir.

Q. Then, as I understand your testimony, you went forward again, and blew the danger signals just about the time that the "Gulftrade" hit number 18; is that right

A. Just—well, a few seconds before she hit.

Q. Then, you stood out on deck until the lines, which had been parted, were hauled inboard?

A. Yes, sir.

Q. And then, you went into the pilot house, and took charge, and put your helm hard aport, and went across the bow of the "Gulftrade," and down her starboard side to pick up this man; is that right?

A. Yes, sir.

Q. When did you form the impression that the port side of one or both port barges in your tow was about 30 feet from the land on the eastern side?

A. Well, when you are bringing a tow into the mouth of the Schuylkill, you always hold just as close to that western channel or side of the channel as you can.

Q. And you were assuming that your mate followed this same course on this occasion?

A. Yes, sir.

Q. That is why you think the tow was about 30 feet off the bank?

A. Yes, sir.

Q. Because that is where you should have been?

A. Yes, sir.

Q. How soon after the collision did you leave the tug and go on the "Churchman" to telephone?

A. How soon after?

Q. Yes?

A. I judge around 15 or 20 minutes.

Q. That was after you had made a thorough search for Captain Knowles, who was lost?

A. Yes, sir.

Q. About how much later was it when you returned?

A. Why, about—I judge I was gone about three-quarters of an hour.

By Mr. Long:

Q. You were bound on this trip from what point to what point?

A. From Mantua Creek to 49th Street and Bainbridge Street.

Q. In the Schuylkill River.

A. In the Schuylkill River.

Q. That is, on the west bank of the Schuylkill you were going, and you were going to the east and the west bank?

A. Both sides.

Q. Both sides?

A. That's a good ways up past there.

Q. About what time was it when you left the Mantua Creek?

A. I couldn't tell you the exact time.

Q. Where was your tug when you turned in?

A. At Mantua Creek.

Q. And you were turned in when the mate called you just before the collision.

A. Yes, sir.

Q. Do you think you had enough time to get your wits about you before the collision happened?

A. Yes; I believe I did.

Q. So that you had plenty of time from the time you were called until the collision occurred to get your wits about you, so you knew what you were doing?

A. Yes; I did that before I left the pilot house.

Q. I do not want you to say what was said. Did you have any conversation with the mate when you got into the pilot house?

A. Before or after?

Q. After he called you, before the collision?

A. Why, no; I don't believe I had any——

Q. He had already told you he was afraid a collision was going to happen?

A. Yes, sir.

Q. Do you remember what he said to you?

A. He just came, and shook me, and said he had had a look around, and thought there was going to be a collision.

Q. You did what you said you did: Went into the pilot house, and went back aft, and blew your alarm signal?

A. Yes, sir.

Q. And after you blew that alarm signal, a little while after the collision happened?

A. Yes, sir.

Q. When the mate called you, he shook you, you say.

A. Well, just—— (Illustrating.)

Q. That is what I mean, put his hand on you? (Illustrating.)

A. Yes.

Q. And this room, where you were, was right aft of the pilot house?

A. Joining the pilot house.

Q. Had the mate gotten back to the wheel when you got to the pilot house?

A. Yes, sir.

Q. There was nobody else in the pilot house but the mate, was there?

A. No, sir.

Q. This was a clear day, was it not, Captain?

A. Yes, sir.

Q. How was the tide at the time of the collision?

A. Flood tide.

Q. There was no question that the "Gulftrade" and her tugs rendered all the assistance that they could, is there?

A. Well, the "Gulftrade" kept on going, but the "F. A. Churchman" rendered all the assistance she could.

Q. You say there was a man from the "Gulftrade" that you picked up from the water, that actually jumped overboard to save a man?

A. Yes, sir.

Q. So, there is no complaint about the "Gulftrade" and her tugs going on about their business, and helping you people to help yourselves?

A. Well, not the tugs. The "Gulftrade" kept on going.

Q. You were able to get across the "Gulftrade's" bow, and get on her starboard side?

A. Yes, sir.

Q. She was going rather slowly?

A. Well, not at that present time. It takes a good time to get headway on a ship.

Q. You thought it was perfectly safe to cross her bow, did you not?

A. Oh, yes.

Re-direct examination.

By Mr. Manning:

Q. You were asked about your judgment as to the distance your boat was from the western bank. Did you observe, yourself, at the time how far it was from the western bank, or was your answer to my question based purely on what Mr. Dawson's question suggests, of your idea where it should be?

Mr. Dawson: Objected to as improper re-examination.

Mr. Long: I join in that objection.

By Mr. Manning:

Q. Answer the question?

A. I am just judging about the position of the tow and the tug when I come out, and how far they were when the ship struck there.

Q. Did you see their distance at the time?

A. Well, yes, sir.

Depositions, on behalf of Libellant, taken at the offices of Messrs. Acker, Manning & Brown, 1800

Packard Building, Philadelphia, Pa., on Tuesday, March 30, 1926, at 3.00 o'clock P. M., before E. Forrest Megill, a Notary Public.

PRESENT:

MESSRS. ACKER, MANNING & BROWN, by EVERETT H. BROWN, ESQ., for Libellant.

MESSRS. BURLINGHAM, VEEDER, MASTER and FEARY, by H. ALAN DAWSON, ESQ., for the SS. "Gulftrade," and HOWARD M. LONG, ESQ., for the Gulf Refining Company, Inc., Respondents.

E. FORREST MEGILL, Notary Public.

It is stipulated and agreed between the respective parties that signatures hereto be waived, and that the stenographic costs shall be taxed as a part of the costs of the cause.

LIBELLANT'S TESTIMONY CONTINUED.

HORACE L. WORRELL, having been duly sworn, was examined and testified as follows:

By Mr. Brown:

Q. What is your name?

A. Horace L. Worrell.

Q. Where do you live?

A. 2300 Washington Street, Wilmington, Delaware.

Q. How old are you?

A. Fifty-four.

Q. Chief, in whose employ are you now?

A. Charles Warner Company.

Q. In what capacity?

A. Chief engineer of the Tug "Taurus."

Q. How long have you been employed by the Charles Warner Company?

A. About 22 years.

Q. What licenses, if any, do you hold?

A. One hundred ton, chief, first assistant, commercial, lake, bay and sound.

Q. On October 1, 1923, you were first engineer of the tug "Taurus?"

A. Yes.

Q. Do you recall a collision that day between some lighters in tow of the tug "Taurus" and the steamship "Gulftrade?"

A. Yes.

Q. Where was the tug at the time that collision took place?

A. Just inside the mouth of the Schuylkill proceeding up.

Q. Did she have any lighters in tow?

A. Yes.

Q. What did she have in tow?

A. Four lighters.

Q. Do you remember which ones they were?

A. 53, 18, 44, 33.

Q. Do you know how the tow was made up?

A. 53 and 18 ahead, 18 on the starboard side; 44 and 33 astern, 33 on the starboard side.

Q. Were you on duty at the time of this collision?

A. No, sir.

Q. What time did you go off duty?

A. Just a few minutes before twelve o'clock.

Q. Did you see the steamship "Gulftrade" prior to the collision?

A. Just before she struck.

Q. Where were you at the time?

A. On the port side of the tug "Taurus;" just stepped out of the fire-room, starboard side of the tug "Taurus."

Q. The starboard side of the "Taurus?"

A. Yes, sir; not port.

Q. Where was the steamship "Gulftrade" at that time?

A. The bow was just about opposite No. 33, the rear boat.

Q. In what part of the river was the tug and its tow proceeding?

A. Just inside the mouth of the Schuylkill, proceeding up on the port side of the channel.

Q. About how far was tug and tow from the shore on the port side?

A. About 30 to 40 foot.

Q. Did you notice the course or direction in which the tug was heading?

A. Up the Schuylkill.

Q. Heading how?

A. Right up the Schuylkill, heading right up the Schuylkill.

Q. Did you notice the course of the "Gulftrade?"

A. She was coming in the mouth of the Schuylkill.

Q. How was she heading?

A. Towards the tow when I seen her.

Q. Did you hear any whistle signals exchanged between the vessels at all?

A. No, I did not.

Q. About how far were the barges in back of the tug?

A. About 90 to 100 foot.

Q. Were there any tugs alongside the steamship when you first observed her?

A. One.

Q. Do you know what the tug was?

A. The "Triton."

Q. Where was she, on the port side?

A. Stern quarter.

Q. Did you see any other tug in the vicinity?

A. Not until after the lighter was hit.

Q. Then what tug did you see?

A. The "Churchman."

Q. Well, where did you see her?

A. She came from around the stern of the ship.

Q. About how far off the No. 33 was the "Gulftrade" when you first saw her?

A. I don't believe over thirty foot, something like that.

Q. What did you do, if anything, then?

A. I called out "That is going to hit us," and went in the engine room and opened the engine wide open.

Q. What did you do after that?

A. Stepped out on the port side.

Q. What did you see when you stepped out?

A. I saw the "Gulftrade" strike 33 about midships with the bluff of the bow.

Q. Where did she strike the 33?

A. About midships on the starboard side.

Q. With the bluff of her bow?

A. Yes.

Q. Her port bow?

A. Yes, sir.

Q. What happened then?

A. She shoved the 33 and 44 up over toward the bank, and the 44 went on the mud; then she slid along and struck 18.

Q. Who slid along and struck 18?

A. The "Gulftrade" slid along 33's side, shoved

up right alongside and parted the hawsers when she struck, and struck 18 in the stern.

Q. What part of the "Gulftrade" struck No. 18?

A. The bow.

Q. What happened to the 18 when the "Gulftrade" struck her?

A. Parted the lines and she swung to the starboard across the river and turned over.

Q. What did the tug "Taurus" do at the time of the collision?

A. When the lines tightened she parted both hawsers and she swung bow out and we turned on right on around, came across the "Gulftrade's" bow and back.

Q. How far ahead of the "Gulftrade" were you when you crossed her bow?

A. A hundred to a hundred and fifty feet. I didn't measure it.

Q. Did you notice, before the collision the position of the black buoy at the mouth of the river with reference to your tug and its tow?

A. It was astern of us.

Q. After the tug turned around and crossed the bow of the "Gulftrade" what did it do?

A. We undertook to—we proceeded to try to get the man.

Q. What man?

A. Off of the—Captain Knowles off of the 18.

Q. Where was he?

A. In the water when I seen him first.

Q. Did you succeed in getting him?

A. No, sir. We was about 30 or 40 foot from him when he sunk, probably might have been more, I couldn't say about that, but somewheres in that neighborhood.

Q. What did the "Gulftrade" do after the collision?

A. Proceeded on up the Schuylkill.

Q. And after the tug failed to reach the master of the 18 what did it do?

A. We got our lighters together, anchored them, pulled 33 over on the mud, threw some sand off, listed her, caulked the seam, and the captain went to the phone and reported the accident, and then we got our tow together and proceeded on up with the three boats.

Cross-examination.

By Mr. Long:

Q. Chief, what did the captain say on the telephone when he reported the accident?

A. I wasn't there, I couldn't say. I was aboard the boat.

Q. Where was the telephone? Do you know that?

A. He went on the "Triton," I think it was, or the "Churchman," I won't say which, but one of those boats took him up to the elevators, and I stayed there on the tug.

Q. You don't know, of your own knowledge, anything about the captain reporting the accident?

A. Well, I suppose that is what he went to do.

Q. Well, chief, you were sworn here to tell the truth, the whole truth, and nothing but the truth, and you are not sworn, as you know, to suppose.

A. That is right.

Q. Now, were you testifying here, in your other testimony, from what you supposed, or what you know?

A. Well, I know the rest of it. I told you the captain went to the telephone to report it to the office. That is what he told me.

Q. Oh?

A. And that is the reason he left the tug, with the other tug.

Q. Now, you say that you came off watch at twelve o'clock?

A. Yes, sir; just before.

Q. Just before twelve. Just what time was it that you did come off?

A. Sir?

Q. What was the time that you did come off?

A. A few minutes before twelve. The other crew ate dinner at 11.30, and when they got done dinner I went up to dinner, and I was off watch when they went to dinner.

Q. What time was the collision, if you know, from looking at your watch?

A. I could not say exactly. Between two and three. It has been nearly three years ago.

Q. And it is hard to remember these things, is it not, captain?

A. In that time, yes; unless I set it down. I didn't set the time down.

Q. It is hard to remember distances, too, is it not, after three years, Chief?

A. No; I think not.

Q. Where was your tug when you went off watch to eat your dinner, Chief?

A. Down off Mantua Creek.

Q. You got your dinner that day, did you?

A. Yes.

Q. Then what did you do?

A. I went around the deck.

Q. Well, did you walk around the deck for a couple of hours there or did you do something else?

A. Well, I went below once in a while.

Q Where did you go below?

A. I went down in the fire-room just before the accident happened.

Q. What were you doing down there?

A. The usual thing in running a boat.

Q. I want to know what the usual thing is, Chief. I want to know what you were doing. You have testified to the movements of your boat, and the movements of the other people. Now I want to know what you were doing down in the fire-room?

A. Well, I went down with the fireman. He called me down there.

Q. Well, what did he call you for, do you know?

A. Some information.

Q. What about.

A. The fires.

Q. Well, what was the trouble with the fires?

A. Nothing.

Q. Why did he have to have your advice?

A. Well, I am chief engineer of the boat and supposed to give it.

Q. Don't you remember why he called you and what the trouble was? If you don't, why say so?

A. Well, I could not say exactly.

Q. You don't remember. Is that it?

A. Not on that question; no.

Q. Do you know what time it was that you went down in the fire-room?

A. Just as we was going in the mouth of the Schuylkill.

Q. About what time of the day was it?

A. Between two and three.

Q. Is that as near as you can give me?

A. Yes.

Q. In other words, was it nearer two or nearer half past two, or nearer three?

A. That is about as near as I can tell you.

Q. The best estimate you can give me is between two and three? You don't know if it was nearer two or three?

A. Well, it was nearer three, if anything.

Q. What sort of a day was it—clear day?

A. Yes, clear.

Q. Cold or warm or how?

A. No, it wasn't cold; it was warm.

Q. Do you know how the tide was when you went in the Schuylkill?

A. Flood tide.

Q. Did you see the "Gulftrade" and these tugs before you went into the fire-room?

A. No.

Q. Did you see the "Gulftrade" and these tugs at any time during those two hours you were walking around the deck?

A. Didn't notice them. Might have seen her. She was down the river.

Q. Were you actually on deck at the time the "Taurus" and her tow entered the mouth of the Schuylkill?

A. I went down in the fire-room just as she was entering.

Q. How long did you stay down in the fire-room?

A. Five to ten minutes, probably. I didn't stay there long.

Q. Why?

A. Too hot.

Q. Were you called out just before the collision by any one?

A. No, sir.

Q. What called your attention to the "Gulftrade?"

A. I stepped on deck and seen her, that was all.

Q. As you came out of the fire-room?

A. Yes.

Q. You stepped on deck and you saw the "Gulftrade?"

A. Turned aft and I was facing her.

Q. You said in direct examination you were standing on the port side aft. Is that right?

Mr. Brown: Starboard side.

A. Starboard.

By Mr. Long:

Q. Starboard side?

A. I came out on the starboard side. I didn't say aft.

Q. When you saw the "Gulftrade" you saw she was about 30 feet from what?

A. The 33.

Q. From 33. And when you saw that what did you do?

A. I went in the engine-room and opened the throttle wide open.

Q. Did you get any order from the pilot house to do that?

A. No, sir, I did not.

Q. There were no orders then sent down from the pilot house at all?

A. Not to open her wide open. The boat was rung up under a jingle.

Q. How did you know on what order the engines were being operated when you got in the engine-room? Some one tell you?

A. No.

Q. How did you know?

A. By the running of the engine, the position of the throttle.

Q. So what you did was to open her up and give her all the steam possible?

A. Yes.

Q. Where did you go to do that?

A. Engine room.

Q. What part of the engine room—starboard side, port side or where?

A. I went in the starboard door and the throttle is about two-thirds or three-quarters of the way across the engine room.

Q. Toward the port side.

A. Yes.

Q. Was the other engineer in there at the time?

A. He was below oiling the engine.

Q. Then you opened the throttle. What did you do then?

A. Stepped on the port side.

Q. How far forward from the stern is that entrance to the engine-room on the port side?

A. About 30 foot.

Q. How far away from the stern end of the house is that door on the port side of the engine room which you came out?

A. About 12 foot; maybe 15.

Q. Would you say at least 12 and probably 15 feet?

A. Twelve—12 to 15 foot.

Q. And you stayed there opposite that door, did you, watching what occurred?

A. Yes.

Q. Now, Chief, as I understand it, you ran into the engine room, found that the engineer on duty was down in the fire-room, and you opened up this throttle to give your boat all the steam she could have and went out this port door and stood there and watched this collision. Is that it?

A. Yes.

Q. Why didn't you stay in the engine room?

A. I could reach the throttle from the doorway.

Q. But you went out of the engine room when you knew there was no one in there to look after the engine?

A. The engineer was coming up. When I hollered to him he was going to get hit he started up.

Q. You expected the tug to get hit, did you?

A. Not hardly, if we could get out of the way.

Q. Not hardly. You knew you could get out of the way?

A. Yes.

Q. Why did you call the other engineer out of the fire-room then?

A. I didn't call him.

Q. Excuse me. I thought you said you did?

A. I said I told him the tow was going to get hit.

Q. Did you say the tow or tug?

A. I didn't mention either. I said, "We are going to get hit." He come up.

Q. About how long were you standing there before the collision happened, Chief? Was it a question of minutes or seconds?

A. Seconds.

Q. As a matter of fact, almost as soon as you got out of that engine room the collision happened?

A. She struck 33, yes.

Q. It all occurred at one time, did it not?

A. About.

Q. Do you know how far inside of these red and black buoys marking the mouth of the Schuylkill your tow was at the time of the collision, or were you not able to notice it at that time? Did you have so many other things you were noticing that you didn't pay attention to that?

A. I know exactly where the tow was when she was struck.

Q. All right, sir; tell us?

A. There is a line fence just above there from the forts, government property. When we turned around we were opposite that, where the cable goes over, which, I suppose, is about a quarter of a mile from the black buoy, probably quarter of a mile.

Q. Just above or below the black buoy?

A. In the Schuylkill.

Q. Above. That was after you turned around?

A. We turned around there, right at that.

Q. In the meantime the tug had been going full speed ahead, hadn't she, with her throttle wide open?

(Witness nods.)

Q. And you had crossed ahead of the "Gulftrade," you say, about 150 feet?

A. Yes, when we went around. I don't say how long that throttle was wide open. Bells began to come when she got struck, and the other man answered the bells; I did not.

Q. Well, Chief, you are a witness here, and I am not asking you to argue the case, I am only asking you to tell us what you saw?

Mr. Brown: That is all right; you are telling him. Don't let him confuse you with those remarks.

By Mr. Long:

Q. Did any bells come down to that engine room after you had gone out and before that other engineer got up there, or don't you know ?

A. He was coming out as soon as I called.

Q. Well, from standing there outside on the deck at this engine room on the port side, as you have told

us, did you see the engineer come into the engine room?

A. Certainly; yes.

Q. Before or after the collision?

A. About the time it hit?

Q. About the time?

A. It all happened at once.

Q. I was just wondering, Chief, how you could see in the engine-room and see aft and see all these other things you have told us about, that is all?

A. If you would go in the tug you would very easy see.

Q. And you were standing on the deck opposite this door, you were not aft of the door?

A. No, I was not aft of the door. I didn't leave the door until the engineer came.

Q. What space is there between that doorway there and the rail of your boat on the port side?

A. From the doorway to the railing of the boat is about two foot and a half.

Q. About how high is that house?

A. The house?

Q. Yes, from the engine-room aft?

A. Somewheres about six foot.

Q. How tall are you?

A. About five foot, six and three-quarter inches I think.

Q. So that you are not tall enough to see over the house?

A. I am not; no sir.

Q. Now you were asked what tug or tugs you saw when you looked back there and you said you saw the "Triton?"

A. Yes.

Q. And where did you say that she was?

A. On the port side of the ship about on the stern quarter there.

Q. Now what part of the "Gulftrade" struck 33?

A. The bluff of her bow.

Q. About how far aft from her stem? Can you tell the distance from the stem, the bluff of the bow, the round part? Was it the length of your tug boat?

A. Hardly.

Q. How long is the tug?

A. Sixty-five foot.

Q. Well, was it 50 feet?

A. I couldn't tell you to no certainty on that question.

Q. As a matter of fact you were not looking out long enough to see the details, were you?

A. It struck with the bluff of the bow.

Q. I will put the question to you again and see whether I can get a yes or no answer?

(Question read.)

A. I don't know the distance from the stem of the "Gulftrade" to the bluff of the bow in actual feet.

Q. Well, at the time you saw the bluff of the bow strike this barge 33 did you also see the stem of the steamer?

A. Yes.

Q. Can't you give us any approximate distance that that was aft of the stem of the steamer? Give us any estimate of it?

A. Not to no certainty.

Q. Which bow was it that struck?

A. The port.

Q. The port bow. You had nothing to do with directing the course of the tug coming in there, did you?

A. No.

Q. As you have told us, you are chief engineer, you are not a pilot?

A. I am not a pilot.

Q. Do you remember whether or not there was any wind that day of any consequence?

A. Very little.

Q. Did you see the tug "Churchman" when she dropped away ——

A. No.

Q. Just a second. Did you see the tug "Churchman" when she dropped away from the port bow of the steamer?

A. No.

Q. Did you see the "Churchman" at the port bow of the steamer?

A. No.

Q. At the time of the collision?

A. No.

Q. You were able to see, as you say, the stem of the steamer, and you could see all the way back aft on the steamer too?

A. Yes.

Q. You did see the "Churchman" after the collision trying to help find Captain Knowles?

A. I didn't see it. No. He wasn't trying to help find Captain Knowles. He was too far back.

Q. What was it doing at the time?

A. Coming out from the stern of the steamer when I seen him.

Q. Did you see him pick up the man that jumped over from the "Gulftrade?"

A. We picked the man up.

Q. You on the "Taurus" did?

A. Yes.

Q. Where was the "Churchman" then?

A. Astern.

Q. Do you remember the "Churchman" coming up to your tug and your captain going on board of her to go ashore?

A. One of the boats took him ashore. I am not sure which one.

Q. You don't remember which one it was?

A. I won't say.

Q. Did you see the "Triton" cast loose from the steamer at any time after you had seen her on your port quarter?

A. No, I did not see her as she was on the other side of the boat.

Q. You say you are still in the employ of the Warner Company?

A. Yes, sir.

Mr. Dawson: No questions.

Re-direct examination.

By Mr. Brown:

Q. Chief, when you first came on deck out of the engine room did you notice the position of the tow with reference to the tug?

A. It was in line.

Mr. Brown: That is all.

Re-cross examination.

By Mr. Long:

Q. When was that in reference to the collision? You say when you first came on deck. Does that mean when you came on deck to eat your dinner?

A. No; when I stepped out of the fire-room, just before the barge, or the "Gulftrade," struck the tow.

Q. How did you know Mr. Brown meant that, because his question don't so state?

Mr. Brown: I said when he first came out.

A. He asked when I first came out on deck.

By Mr. Long:

Q. How was the tow when you came out of the engine room to get your dinner?

A. Anchored.

Q. Anchored. And did you notice the tow while you were on deck two hours, during those two hours, and after you got your dinner?

A. I was on deck all the time, walking around.

Q. Did you notice your tows, I asked?

A. Not particularly; not coming up the Delaware.

Q. So that you would not be able to testify whether or not it was right in line during that two hours?

A. Not all the two hours, no.

Q. And did you notice your tow as you were coming in the mouth of the Schulykill before you passed the red and black buoys?

A. Not before.

Q. Did you notice your tow at the time your tug passed the red and black buoys?

A. We came right up along the black buoy and came in the mouth of the Schuylkill.

Q. How far off from the black buoy were you when you came in?

A. Oh, I suppose thirty foot.

Q. Thirty feet. And which way were you leaving it?

A. We were to the starboard side of it.

Q. Leaving the buoy to your port?

A. Port.

Q. Did you continue to watch the course of that tow from that time on?

A. No.

Q. Did you have time, after you came out of the fire-room, before this collision happened, to see all these things that you have told us about, Chief, do you think?

A. Everything that I have told I saw.

Q. And yet you state that almost immediately after you came out on the deck of that tug, out of that fire-room, or engine room, you stood there on the port side opposite that door?

Mr. Brown: Starboard side.

Mr. Dawson: Port side.

Mr. Brown: Starboard side.

Mr. Long: Port side he said.

Mr. Brown: No, he didn't; he said starboard.

Mr. Long: He said he went in the starboard side and went out the port side.

By Mr. Brown:

Q. Which side did you come out?

A. On the port side.

Mr. Brown: I beg your pardon.

The Witness: Of the engine room; not the fire-room.

By Mr. Long:

Q. Well, the engine room. The fire-room is underneath the engine room?

A. The upper fire-room is.

Q. On the same floor?

A. The same floor.

Q. But the engineer we are talking about you state was down in the fire-room?

A. He was down in the fire-room.

Q. He was in the engine room?

A. Sure. Oiling the engine.

Q. Is that on the same floor you were on?

A. No, sir.

Q. Down below you?

A. Yes, sir.

Q. You come up a ladder, don't you?

A. Yes, sir.

Q. How far down does that ladder extend down—about 6 feet?

A. There (indicating the top of his head) are the marks. No, I don't believe it is six foot because I have got marks on my head where I strike the grating.

Q. Now, you said, after you opened up this throttle wide open you went out of the engine room. That is an upper level, isn't it?

A. Yes, sir.

Q. Yes. Practically flush with the main deck, isn't it, and above where the other engineer was?

A. Yes.

Q. And you stood out at this door, and almost immediately after you got out state it was a question

of seconds when the collision occurred. That is true, is it not?

A. Yes.

Q. That is all.

By Mr. Brown:

Q. Chief, when you first came out on to the deck, and when you saw the "Gulftrade" approximately 30 feet from the starboard side of the No. 33, did you come out of the fire-room or the engine room?

A. Stopped out of the fire-room.

Q. On which side of the tug did you step out?

A. Starboard.

Q. On the starboard. And then what did you do, step into the engine room?

A. Stepped around and went in the starboard door of the engine room.

Q. The starboard door of the engine room. Then when you came out of the engine room, which side did you come out of?

A. Port side.

Q. On the port side?

A. I came straight through.

Q. And it was the first time you came on deck, when you came out on the starboard side, that you saw the "Gulftrade" first?

A. Yes, sir.

By Mr. Long:

Q. Fom the time you got your dinner up until this collision occurred you were never in your room, were you—your own room?

A. No. I had no occasion to go in.

CAPTAIN JACK BARBIERI, having been duly sworn, was examined and testified as follows:

By Mr. Brown:

Q. What is your name?
A. Jack Barbieri.
Q. Where do you live?
A. 517 Thompson Street.
Q. Where?
A. Philadelphia.
Q. How old are you?
A. Sixty-one now.
Q. What is your occupation?
A. Waterman.
Q. What do you do?
A. Sailor; seaman.
Q. How long have you been a sailor?
A. All my life. I started when I was fourteen years old.
Q. What nationality are you?
A. I was Austrian, but I don't know what I am now.
Q. Who do you work for?
A. I was working for Frank Cavin and Charles Warner Company.
Q. Are you still working for the Charles Warner Company?
A. Yes, sir.
Q. What is your work? What do you do?
A. I got charge of barges.
Q. What barge?
A. 33.
Q. Now, on October 1, 1923, were you on the No 33?

A. Yes, sir.

Q. Where was the barge that day along about noontime?

A. Noontime? Noontime, I think it was outside.

Q. Where were you that morning?

A. That morning?

Q. Yes, the morning of October 1st?

A. I think I was outside the mouth of the Schuylkill, I think.

Q. Did you have any cargo on board?

A. Yes, sir.

Q. What?

A. Concrete sand.

Q. From what place did the barge leave with this cargo of concrete sand that morning, do you know?

A. 55 North.

Q. Oh, no. Were you not in the Delaware River?

A. Yes, sir.

Q. And you started up the Delaware River?

A. Yes, sir.

Q. Do you remember when the barge came in the mouth of the Schuykill River?

A. Well, I don't know the time.

Q. No. But you remember about the time?

A. One or two o'clock, something like that, I think.

Q. Yes. What tug had you in tow?

A. The "Taurus."

Q. Were there any other barges in tow?

A. Yes, sir, four.

Q. What were they, do you remember?

A. 53, 18, 44, 33.

Q. How was the tow made up?

A. Two abreast.

Q. Two abreast. And which were the first two?

A. Eighteen—18 and 53.

Q. On which side of the tow was the No. 18?
A. Starboard side.
Q. What were the last two barges in tow?
A. The last two, 44 and 33.
Q. On which side of the tow was Barge 33?
A. What barge do you mean?
Q. On which side, the starboard or port, was the Barge 33?
A. Starboard.
Q. Do you remember, as you came up the Schuylkill River, seeing the steamship?
A. Yes, when we came to enter the mouth.
Q. Do you know what the name of the steamship was?
A. No, sir, because I was all excited. I don't know the name of the steamer.
Q. Did you see any tugs with the steamer?
A. Yes.
Q. How many?
A. One; one on the starboard side.
Q. One on the starboard side?
A. I mean the port side of the tug, but my starboard side she come.
Q. Where was the steamship when you first saw her?
A. She was inside of the mouth of the Schuylkill.
Q. Where was your tow when you first saw her?
A. Well, I don't know if we was above the buoy or below the buoy, I couldn't tell you about that.
Q. You don't know?
A. No.
Q. Which side of the river were you?
A. On the east side.
Q. Which side?
A. The east side, this side. (Indicating.)
Q. Which side of the river was your tow, port side or starboard side?

A. Starboard side.
Q. Your tow?
A. Yes, on the starboard side.
Q. Your barge was on the starboard side of the tug?
A. Yes.
Q. On which side of the river was the tug and the tow?
A. This side (indicating), east.
Q. When you came in the river——
A. Yes, sir.
Q. —which side of the river were you on, the port side or the starboard side?
A. The port side.
Q. The port side?

Mr. Long: I object. The witness has repeatedly said east side.

By Mr. Brown:

Q. How far from the shore were you?
A. From the shore? I was from the shore about three or four fathoms.
Q. Three or four fathoms. On which side of the tug and its tow was the shore?
A. The tow?
Q. On which side of the shore? On which side of you, as you came in, was the shore?
A. It was the starboard side.
Q. The shore?
A. The shore.
Q. Which shore were you nearest to?
A. On the starboard side.
Q. Now, Captain, just think a minute.
A. We were going up.

Q. You were going up, yes?
A. On the left.
Q. And your barge was on the starboard side of the tow?
A. On the starboard side of the tow.
Q. Which shore were you close to? Was it the starboard side or the port side?
A. Starboard side.
Q. The shore?
A. By that I mean the port side of the 44.
Q. You were on the starboard side of the 44?
A. Yes, sir.
Q. Now, when you saw the "Gulftrade" how was she heading?
A. You mean 18?
Q. When you saw the steamer——
A. Yes.
Q. In what direction was she heading?
A. Well, he got in a direction close to come to me.
Q. What direction were you heading?
A. Right in that direction, straight up.
Q. Straight up what?
A. Up to 49th Street.
Q. Where was the tug going?
A. Going in the Schuylkill.

Mr. Long: Going to 49th Street.

By Mr. Brown:

Q. You were going straight up the Schuylkill?
A. Yes, sir.
Q. When you first saw the steamer how far away was she?
A. She was about a quarter of a mile.
Q. About a quarter of a mile away. What did you do?

A. What did I do? I started looking.
Q. What did the steamer do?
A. The steamer started to run up.
Q. Did the steamer hit you?
A. Yes, sir.
Q. Hit your barge?
A. Yes, sir, she hit the barge from the stem, the bow, about 20 or 25 feet.
Q. Twenty or 25 feet from the stern?
A. From the stem.
Q. What part of the steamer hit you?
A. Starboard side. She hit me on the starboard side.
Q. Hit you on the starboard side?
A. Yes, his port side.
Q. His port side hit your starboard side?
A. Yes.
Q. Then what did the steamer do?
A. He hit me. He struck me on the rail, and he opened this here plank and it started leaking.
Q. And then what happened, to your knowledge?
A. My barge started to pretty near sink.
Q. And then did the steamer go ahead?
A. The steamer passed alongside, alongside of my barges, and then when he passed along, then I called to the "Taurus," and the "Taurus" come to me, says, "What is the matter with me." I says, "We are going to sink." "What are you going to do?" "Put me on the beach, lighten me up."
Q. Did you see the steamer do anything else?
A. No, sir.
Q. Did you hear any whistle blown?
A. Yes, sir.
Q. What?
A. One whistle, starboard.
Q. One whistle?

A. Yes, sir.

Q. What boat blew that whistle?

A. The steamer.

Q. Did you hear any other whistle blown?

A. The "Taurus" answered.

Q. Was that before or after you had seen the steamer?

A. Before.

Q. Before?

A. Before he was inside he whistled and then the "Taurus" answered.

Q. Yes. And where was the steamer then?

A. Then he was about quarter of a mile I think far away.

Q. About a quarter of a mile away?

A. Yes, sir.

Q. Did you hear any signals after that?

A. No, I don't recollect, because I was excited. I couldn't tell you.

Q. Why were you excited?

A. Because I was. When it started leaking, I got to attend to my pump.

Q. Yes, but the steamer was a quarter of a mile away then. Why were you excited?

A. Well, I was looking. Because I saw she is coming in a direction that she was going to hit me.

Q. You saw the steamer was coming in a direction to hit you?

A. Yes, sir.

Q. When you were going up the stream did you see what direction the tug was heading? What direction was the tug going as it went up the stream?

A. Straight up.

Q. Straight up?

A. Straight up.

Q. Could you tell whether or not the steamer was going straight up, or not?

A. No, I can't say that, because he was passing alongside of me.

Q. But when you first saw her?

A. Then he was on a straight course, and then he swing over.

Q. Who was that, the steamer?

A. The steamer.

Q. Captain, did you notice the difference between the right and left banks of the river as you went up?

A. What do you mean?

Q. The right or left?

A. Right.

Q. You know which is your right hand?

A. Yes, that is my right hand (indicating his right hand), and this is my left hand. (Indicating.)

Q. As you went up the river——

A. Yes, sir.

Q. And you were looking up the river, which side of the river was the tug and the tow on?

A. Left side.

Mr. Long: I object. I object to this, as the witness has repeatedly answered the same question, has answered it a number of times.

By Mr. Brown:

Q. How far was your tug and tow away from the left bank of the river?

A. I could not tell you, because I was behind; I was behind, see?

Q. How far was the barge away from the left bank of the river?

A. She was about four or five fathom, I think.

By Mr. Long:

Q. You mean your barge was four or five fathoms —your barge?
A. Yes, because I was outside.

By Mr. Brown:

Q. Did you at any time see the black buoy at the entrance to the river?
A. Yes, sir.
Q. Captain, where did the 44 go when the steamship ran into your barge?
A. He went aground. ashore.
Q. He went on the shore?
A. Yes, sir; because, when the steamer hit me he pushed the two boats in the back.
Q. What side of 44 went on to the shore?
A. Both sides. The starboard side, you mean— The port side.
Q. Which side, the left side or the right side?
A. Left side.
Q. The left side. That is right.

Cross-examination.

By Mr. Long:

Q. How old are you, Mr. Barbieri?
A. Well, I was born in 1864. That is 61 years.
Q. You are married?
A. Yes, sir.
Q. Your wife was on board the scow at that time, was she?
A. Yes, sir.
Q. Is she living?

A. Yes, sir.

Q. How long have you lived in this country?

A. Well, I traveled, but this time I was seventeen years here, but I traveled in this country in 1891.

Q. But you have lived here now 17 years, have you?

A. Yes, steady, straight now.

Q. Straight. Do you speak English?

A. Oh well, a little bit.

Q. Well, you have been able to talk to us today?

A. Oh well, after all——

Q. Are you a naturalized citizen?

A. Sir.

Q. Are you a naturalized citizen?

A. Not yet.

Q. Why not?

A. Because—because they ask too many questions.

Q. But you have taken out your first papers?

A. Yes, I have taken them out for three years.

Q. You don't hold any license as an officer on a vessel, do you?

A. No, sir.

Q. Never had any license here, had you?

A. No, sir.

Q. You have been master of the Scow 33 for 15 years, haven't you?

A. Yes, sir.

Q. I noticed Mr. Brown, in asking you questions about 33, spoke about her as a barge. She is a scow, is she not? She has not a rudder, has she?

A. She has got no rudder.

Q. This day of the collision was your scow loaded?

A. Yes, sir.

Q. How deep?

A. About three inches, deck free.

Q. You had three inches freeboard?

A. Yes, freeboard.

Q. You had three inches freeboard or one inch?

A. Freeboard. The scuppers was out three inches out of the water.

Q. You and your wife were on this barge, on the scow, and that is all the people that were on her?

A. That is all.

Q. What time of the day was it that you came into the Schuylkill River?

A. It was October, but I don't remember the day.

Q. I say, what time of the day was it?

A. About two or three o'clock, I think.

Q. In the afternoon?

A. Yes, sir.

Q. Was that when you came in the Schuylkill?

A. I think so.

Q. What did you do after you got your dinner that day?

A. What I got for dinner?

Q. What did you do after you got your dinner that day?

A. I was on deck.

Q. You didn't have anything to do when you went there?

A. Eh?

Q. You didn't have anything to do around the deck, no duty?

A. Well, clean the deck. All the time I got something to do cleaning, if you want to do it.

Q. I mean, you did not have to steer, because you had no rudder?

A. Don't want to steer, but we have got something else to do.

Q. Well, were you not back in your cabin?

A. No, sir.

Q. You do have a cabin on that scow, though, don't you?

A. Oh, yes.

Q. Aft?

A. Yes.

Q. Your scow is just like a square box?

A. Just like a box.

Q. Just like a square box, just like the 44—isn't it?

A. Yes.

Q. They are the same boat, are they not?

A. All the same thing.

Q. And you have got a room back there where you can sleep and cook your meals?

A. Oh yes, sure.

Q. Now, how long is this scow?

A. 120 feet long.

Q. How wide is it?

A. Twenty-six.

Q. Twenty-six feet?

A. Twenty-six feet.

Q. And the 44 is about the same width?

A. I could not tell you. I don't know. I think it is all about the same size.

Q. About the same. You have seen the 44 many times, haven't you?

A. Yes, but I don't know how long is mine, see. I think it is about all the same.

Q. Now you say you were on the deck here this afternoon?

A. Yes, sir.

Q. Did you only hear the steamer blow one whistle signal?

A. Yes, only one whistle.

Q. You did not hear any other signals except when the "Taurus" answered?

A. Except the "Taurus."

Q. That is when the "Taurus" answered that one whistle?

A. Yes, sir.

Q. Was that whistle signal what called your attention, what caused you to look back and see the steamer?

A. No; I saw the steamer, she come.

Q. Did you see the steamer before she blew the whistle or afterward?

A. Before; because I seen the steamer when he entered the mouth of the Schuylkill.

Q. Oh, you did? How far away was he then?

A. Oh, then he was about a mile, a mile and a half.

Q. A mile and a half?

A. I calculate that, you know.

Q. Didn't you hear him blow any whistle?

A. He whistle when he was pretty near in.

Q. In other words he was about a quarter of a mile from you then?

A. Well, yes.

Q. How many lengths of your scow was he away when he blew the whistle?

A. Lengths?

Q. How many lengths, tug lengths, would you say?

A. About four or five fathom.

Q. You haven't got me right. Instead of telling me the distance the steamer was away, a quarter of a mile, I want to know how many lengths of your scow?

A. Well, I got two lines—four lines; two crossways and two straight.

Q. I am not asking you about lines. You have told us the steamer was quarter of a mile away?

A. Yes.

Q. When she blew the whistle?

A. Yes, sir.

Q. And the "Taurus" answered it?

A. Yes.

Q. She answered right away, didn't she?

A. Yes, sir.

Q. And then the steamer was coming right in the channel, wasn't she?

A. Yes, sir.

Q. Now what I want to know is: Instead of telling me that distance in miles, or quarter miles, I want to know how many lengths of your scow, how many lengths of the scow she was away?

A. Lengths? Length is about 140 feet.

Q. All right. Now how many of your scows could you put in that space between your scow and the steamer? Do you know?

A. Well, you could put in—I don't know how long is the steamer.

Q. All right. Did you watch the steamer from the time you heard that whistle clear up to the time of the collision?

A. Yes, sir. I was on deck.

Q. Why did you watch her?

A. Why did I watch it? I saw the tug on the starboard side.

Q. I say: Why did you? Why did you stand there and watch the steamer?

A. Because I seen she was coming in a direction to go to hit me.

Q. All right. You thought, when that steamer was quarter of a mile away ——

A. Yes.

Q. —— at the time he blew that one whistle ——

A. Yes.

Q. —— you thought he was going to hit your barge?

A. Yes, sir. Yes, because I seen the bow, she cut across, swinging; she cut across and was going to hit me.

Q. So from the time the steamer blew that whistle that you heard, clear up to the time that she did hit your barge ——

A. Yes.

Q. —— you stood there and watched her?

A. Yes.

Q. Because you knew she was going to hit your barge?

A. Yes.

Q. That is right, is it?

A. Yes, sir.

Q. Well, knowing that did you yell to the tug boat and ask them to do anything to get your barge out of the way?

A. Well, when I saw that the steamer passed, then when I started leaking I called to the "Taurus" and the "Taurus" put me ashore.

Q. You did it after the collision?

A. After the collision, yes.

Q. Now I am asking you what you did before the collision. Now let us get that straight?

A. Well?

Q. Now, wait a minute. Let us understand each other?

A. Yes.

Q. The steamer was quarter of a mile away?

A. Yes, sir.

Q. And she is coming up on you?

A. Yes, sir.

Q. And you made up your mind that she was going to hit you?

A. Yes, sir.

Q. From the time she blew that whistle you knew she was going to hit you?

A. Yes.

Q. Did you do anything to tell the tug boat to pull out of the way?

A. What tug boat?

Q. The tow-boat, the "Taurus?"

A. No, the tow-boat —— Because the "Taurus" was ahead. How are we going to drop the tow with flood tide?

Q. Oh, I see. Did you jump off your barge and get over on the 44?

A. No, I sent my wife there. I stayed on my boat.

Q. Did you stay on there because you were a brave man or because you felt it was no use to get over on the 44?

A. No, because—because I think it was damaged, to lose the boat.

Q. What could you do after the steamer hit her? What could you do to stop the boat from being lost?

A. Then I tried to jump then on the 44.

Q. Was that after she hit you, after the steamer hit you?

A. Yes.

Q. Now just when this boat was quarter of a mile away, and you knew she was going to hit you, you say?

A. Yes, sir.

Q. Were you expecting her to hit your boat? What part of your boat?

A. About the stern.

Q. About the stern?

A. But he started to swing a little bit and then catches me aft of the bow a little, about 20 or 25 feet.

Q. The steamer swung to starboard, did she?

A. Yes.

Q. Swung to her right?

A. Yes.

Q. She was going to hit you in the stern when you saw her swing to her right ——

A. Yes.

Q. And that brought her along your side—is that right?

A. Yes, sir.

Q. How close was she to your boat when you saw her swing to the right—to her right?

A. Oh, about six or seven fathom I think.

Q. Six or seven fathom?

A. Yes, sir.

Q. Now, you did not see this steamer hit 18, did you?

A. No.

Q. You could not see forward?

A. No, sir.

Q. You could not see over your house?

A. No, sir.

Q. Where was your pump?

A. On the starboard side.

Q. On the starboard side aft?

A. Aft.

Q. And you went there and worked your pump, did you?

A. Yes, sir.

Q. Have you been up that Schuylkill River very much?

A. Oh yes, every second trip about, about two or three times a week.

Q. You were being asked about the banks of the Schuylkill. It has a bank on each side, don't it, going up there?

A. Yes.

Q. There is a bank on your right-hand side?

A. Yes, sir, a bank.

Q. And a bank on your left-hand side?

A. Yes, sir.

Q. And you know that the right-hand side is starboard, and your left-hand is port, don't you?

A. Yes, sir; yes, sir.

Q. You are still working for the Warner Company, are you, Mr. Barbieri?

A. Yes, sir.

ADJOURNED.

(Deposition of Hiram B. Sheard, a witness for the libellant, taken at the offices of Messrs. Acker, Manning & Brown, August 11, 1926 at 2.30 P. M.)

PRESENT:

MESSRS. ACKER, MANNING & BROWN, 1820 Packard Bldg., Philadelphia, by EVERETT H. BROWN, JR., for the Libellant.

MESSRS. BURLINGTON, VEEDER, MASTEN and FENNEY; by H. ALLEN DAWSON, ESQ., for the S. S. "Gulftrade."

HOWARD M. LONG, ESQ., for the tug "Churchman" et al.

HIRAM B. SHEARD, being duly sworn by a Notary Public, Miss Besse Kite, was examined and testified as follows:

By Mr. Brown:

Q. Where do you live, Captain?
A. At that time, 1540 North 29th Street.
Q. Where are you living now?
A. I ain't living any place now, on the boat.
Q. On what boat?
A. Boat 81.
Q. Whose boat is that?
A. Rickenbach's boat.
Q. How old are you?
A. 67.
Q. How long have you been following the water, Captain?

A. Off and on for about 20 years, different things

Q. What positions have you held?

A. Deckhand, galley, and in charge of these lighters, and so forth like that.

Q. What kind of vessels have you been on in addition to these lighters?

A. I have been on fishing boats and like that.

Q. Sailing vessels, barges and lighters?

A. Yes.

Q. Inland or coast waters?

A. Inland.

Q. On October 1st, 1923, you were Master of barge No. 53, weren't you?

A. Right.

Q. Of the Charles Warner Company?

A. Yes.

Q. That barge that day was loaded with a cargo of pebbles, and was taken in tow of the tug "Taurris" at the mouth of Mantua Creek, with some other barges. Is that right?

A. Right.

Q. Where was your barge bound?

A. Up the Schuylkill.

Q. There were some other lighters in tow of the "Taurris," weren't there?

A. Yes.

Q. What were they?

A. No. 18, 44 and 33.

Q. How was the tow made up?

A. The tow was made up, I was on port hawser; 18 was on starboard hawser; 44 was the stern of me, and 33 was stern of 18.

Q. What lines did you have from the tug to the two leading lighters?

A. Off my boat?

Q. Yes?

A. Port line.

Q. There was a line from the stern of the tug to the port corner of your barge. Is that correct?

A. Yes, from the port corner to the stern of the tug.

Q. Were there any other lines from the tug to the tow?

A. Yes, starboard line, that was on 18.

Q. Where on 18?

A. Starboard corner.

Q. About what was the length of the line between the tug and the leading lighters, do you know?

A. I guess about 150 feet, something like that.

Q. How were the lines betwen your barge and the barge astern of you?

A. There was tow lines, about four feet.

Q. How were they fixed to the two barges?

A. 44 had his port line on my port corner, and he had his starboard line on my starboard corner. Then they had cross lines on those from 33 to 44.

Q. Now, there were lines between you and the lighter, astern of you, weren't there, two lines?

A. Yes.

Q. One from the port?

A. Each corner, port and starboard.

Q. Were there any lines between your barge and No. 18?

A. Yes.

Q. What were they?

A. Cross lines.

Q. How were they rigged?

A. From cleek to cleek.

Q. From what corner of your barge to what corner of his.

A. That would be on my starboard corner to his port corner, and the same way at the bow.

Q. Was the same thing true between No. 44 and 33?

A. Yes.

Q. There were lines between those two barges?

A. Yes.

Q. From the port and starboard bow, and the port and starboard stern quarter?

A. Yes.

Q. After the tow was made up, what happened?

A. We come on up the river, up the Schuylkill.

Q. You came up the Delaware River?

A. Yes.

Q. What were you doing on the boat coming up the river?

A. Wasn't doing nothing, only up and down deck, and looking around. That is about all.

Q. Did you notice anything unusual happen before your tow entered the mouth of the Schuylkill River?

A. No.

Q. Did you notice any vessel or vessels in the vicinity before your tow entered the mouth of the Schuylkill River?

A. No, sir, I did not.

Q. Did you hear any whistle signals exchanged?

A. Not till we got in the mouth of the Schuylkill, about half-way in, something similar to that.

Q. Did you go below at any time, go down into your cabin?

A. Well, off and on I did, but I was up principally all the time.

Q. Do you remember the tow entering the mouth of the Schuylkill?

A. Not exactly entering the mouth of the Schuylkill. I remember it going in the mouth of the Schuylkill. I was on deck then.

Q. Did you just come on deck?

A. Yes, I just came on deck then, but I was on deck before that coming up and down.

Q. What did you do when you came on deck?

A. Practically didn't do nothing, only me and Mr. Knowles was talking together.

Q. Who was Mr. Knowles?

A. The man on 18.

Q. Do you know where your tow was when you came on deck and started to talk to Mr. Knowles?

A. Just about in the mouth of the Schuylkill.

Q. Did you notice the position of the buoys at the entrance of the river or not, when you entered the mouth of the river?

A. One was to the port of us, and the other was to the south of us, to the starboard of us.

Q. Do you remember passing them?

A. No, I don't remember passing them, because the reason why, we generally pass them that way.

Q. As you entered the mouth of the Schuylkill River and proceeded up it, in what part of the stream did your tug and tow proceed?

A. Right around the channel to the west bank. We held the west bank around. That is just about the time that No. 18 and I was talking together.

Q. With respect to the channel, were you on the eastern side of the channel or the western side of the channel?

A. We were on the western side of the channel.

Q. How far from the western bank of the river do you suppose you were?

A. I guess about 100 feet, something like that.

Q. Do you know how wide the channel is there?

A. No, I don't know how wide it is.

Q. Do you know how far the channel is from the bank?

A. The channel is about 40 or 50 feet from the bank.

Q. When did you first see any steamship approach your tow?

A. The first time I seen the steamship, Mr. Knowles and I was talking together on the port corner of my boat, and of course we were standing, as near as I can give it to you—we was standing with our face to the east. I happened to look over my right shoulder and I seen the ship.

Q. What ship did you see?

A. The Gulf ship.

Q. What kind of ship was it?

A. Tanker.

Q. Steamship.

A. Yes.

Q. Do you know the name of the ship?

A. No.

Q. Did you find out afterwards what the name of the ship was?

A. No, I didn't. I never bothered. I heard it, but I never paid no attention to it.

Q. What was the name of the ship?

A. I couldn't tell you now.

Q. When you saw the ship where was it?

A. She was about 15 or 20 yards from 33, heading right for the tow.

Q. 15 or 20 yards astern of 33, or to one side of 33?

A. Slanting up right on it, shooting right for her.

Q. What did you do then?

A. I says to Knowles, I says, "Look at that ship." He says, "Yes. It is going to run into us." He was right. It looked that way to me. He goes around my stern and forward on his boat.

Q. Yes, and what happened?

A. I says, "This is no place for me," and I got up on my cabin.

Q. What happened next, Captain?

A. And the ship hit No. 33 and give him a glance blow under and opened him up.

Q. What part of No. 33 did the ship strike?

A. The starboard corner, the stern.

Q. What part of the ship struck the lighter?

A. 18?

Q. No, 33.

A. Well, about ten or fifteen feet from the stem. I would call it the bilge.

Q. What side?

A. Port side.

Q. Port bow?

A. Port bow, yes.

Q. And then what happened?

A. Well, that broke all the tow lines that was on the boat, and she come on up and she hit No. 18.

Q. That is, the steamer hit No. 18?

A. The steamer hit No. 18 stem-on, about four or five feet from the starboard corner, on the bumper. She never touched 18 no more, sent him right up around the starboard side of the ship and the next thing I seen 18, she was upside down.

Q. What part of the tanker hit No. 18?

A. The stem.

Q. Hit the stern of 18 about four feet from the starboard corner you say?

A. Right. When we first seen that ship, it had all the indications of shooting right into us.

Q. Do you know how your tug and tow were headed when you first saw the ship?

A. Heading right up the Schuylkill River, right in the channel, west of the channel, trying to give the ship room.

Q. Did you see the tug change its course at all from the time you first noticed the ship?

A. No.

Q. When you first saw this steamer, how did she seem to be heading?

A. She seemed to be heading bow right—sheering right for the tow, and the stern swinging up the river right on us. That is the reason I drawed No. 18's attention, the way she was heading for us.

Q. Did you hear any whistle signals exchanged after you entered the mouth of the river?

A. I heard them, but I didn't pay no attention to them.

Q. Do you know what they were?

A. No, I don't.

Q. After the ship hit No. 18, what happened then?

A. She went on up the river.

Q. Did she stop?

A. No, she didn't stop.

Q. Was the ship going as fast, or faster than the tug?

A. The ship was going faster than we was.

Q. Have you any idea how fast you were going?

A. As near as I can give you, about three miles.

Q. Have you any idea how fast the ship was going?

A. The ship was going four or five.

Q. What happened to No. 44, did you notice?

A. That is, after the ship had hit the tow?

Q. Yes?

A. 44 took a sheer, and was started into my starboard corner, and busted a hole above the water line, busted a fender, and busted a hole on her starboard side above the water line, in her bow, in my starboard corner.

Q. When did she come into you? Just after the ship hit 33?

A. Yes.

Q. Were the lines between the tug and the barges broken?

A. Yes, both tow lines parted.

Q. And the lines between the barges?

A. All the lines parted.

Q. What did you do after the lines parted?

A. I looked around in the boat, and first thing, I anchored. I thought it was the best thing for me to do, was to anchor.

Q. Do you know where you were at the time?

A. Inside of the black buoy.

Q. How far inside?

A. I had all my anchor chain out, and about 100 to 150 yards from the black buoy on the inside.

Q. What did the tug do after the collision, if you saw it at all?

A. Our tug?

Q. Yes.

A. Our tug went around and tried to pick Knowles up.

Q. Knowles was the Master of 18?

A. Yes. After his lines parted, and after that I —

Q. What time did this collision occur, do you know?

A. About three o'clock in the afternoon.

Q. Do you know how the tide was?

A. Flooding.

Q. What kind of day was it?

A. Nice day, something like today, only it wasn't so warm.

Q. Clear day?

A. Yes, fine day.

Cross-examination.

By Mr. Long:

Q. You hold no license, do you, Mr. Sheard?

A. No, sir.

Q. How long have you been going on the water?

A. Ever since I was around 20 years old, off and on.

Q. You say you are 67 now?

A. 67.

Q. You have no license in the deck department—you have no license at all?

A. No license at all.

Q. Have you been going continuously?

A. No, off and on. Of course, my first experience was in small racing yachts, when they used to be racing on the river. Then I got tired of that and I gave up the water for a while.

Q. What did you do after you gave it up?

A. I followed up the textile industry.

Q. Is that your trade?

A. Yes, strictly speaking my business, the weaving end of it.

Q. You are a weaver, are you?

A. Yes. I done most everthing—drove a milk wagon and weaved.

Q. What do you say you are doing now?

A. I have charge of one of the lighters now.

Q. For the Warner Company?

A. For the Warner Company.

Q. The same people who owned these other lighters?

A. Yes.

Q. What was the date of this collision you are telling us about?

A. The 1st of October.

Q. What year?

A. 1923.

Q. You say it was about three o'clock in the afternoon?

A. About three o'clock in the afternoon.

Q. And you remember that the tide was flood, do you?

A. Flood.

Q. About what time was it you entered the Schuylkill River that day, the mouth of the river?

A. About three o'clock.

Q. You said the collision was about three o'clock?

A. It was all around that time.

Q. So it was a very few minutes after you entered the Schuylkill before the collision?

A. That is right. Of course, I couldn't give you the exact minutes from the time we entered the mouth of the Schuylkill till the collision happened.

Q. It was a very few minutes after you entered the mouth of the Schuylkill that day that the collision occurred?

A. Yes.

Q. Were you on the deck of your barge before you entered the Schuylkill River?

A. I was up and down all the time. I was not there steady. I was there when we entered the mouth of the Schuylkill.

Q. Do you recollect what whistle signals you heard?

A. No, I do not.

Q. Did you hear your tug blow any signals?

A. I heard them both blow, but I didn't pay no attention to them.

Q. So you cannot tell us how many signals you heard from each boat?

A. No.

Q. You spoke about some buoys at the mouth of the Schuylkill; what were those buoys that day?

A. Black and red buoy.

Q. When you came to the Schuylkill that day, did you come in between those buoys?

A. In between the buoys.

Q. Were you nearer to the red buoy, or nearer to the black buoy?

A. Nearer to the black buoy.

Q. About how near did you come to the black buoy?

A. As near as I can judge, coming in there, we was about ten or fifteen yards from the black buoy.

Q. You have been in there quite a few times, haven't you?

A. Yes.

Q. Do you know what the distance is between those two buoys?

A. No, I do not.

Q. Can you approximate it for us? If you cannot give the exact distance, can you tell about what the distance is?

A. I judge maybe about 200 feet. That is a guess.

Q. When you came in there you were about 50 feet from the black buoy?

A. About that, yes.

Q. Did your boat continue straight on that course till the collision, or was there a change in the course?

A. Continued right on that course till the collision.

Q. Did you notice any change of course on the part of the tug right after she entered the mouth of the river?

A. No, sir.

Q. Were you watching her?

A. I was not exactly watching her. After the collision I was watching her.

Q. I mean before the collision?

A. No, I didn't see no change of course.

Q. You were not looking at her at all. You were standing there talking to Knowles, and looking over

towards the east. Your back would be turned to the tug, would it not?

A. No, it would be cater-cornered.

Q. Do you mean your side would be turned to the tug?

A. Yes, my left side would be like this way; about the way I am looking at you. I could look at the tug.

Q. As a matter of fact, you were not paying any attention to what the tug was doing?

A. No, I was not, but I could see it was going in the course.

Q. You had no responsibility for steering your boat, did you?

A. No.

Q. It was up to the tug to take you there?

A. It was up to the tug to take me there; that is right.

Q. It is perfectly possible the tug may have made a change of course and you not see it?

A. It did not make no change of course. When the ship hit us it kept on going.

Q. From the time you entered the mouth of the Schuylkill until the time the "Gulftrade" came into collision with you, it was perfectly possible for the tug to have made a change of course, and you not to have seen it?

A. It could hardly change the course.

Q. Do you say the tug made no change of course?

A. Made no change of course.

Q. Are you positive about that?

A. I am positive.

Q. You would be positive even though the captain of the tug said he did make a slight change of course, would you?

A. Sure, he kept on his course. I couldn't say no different. Owing to the fact of a collision, I should think he ought to keep on his course.

Q. Is that the reason you say he did keep on his course?

A. No, that is not the reason why, because I didn't see him change his course.

Q. Mr. Sheard, would you swear here today that this tug which was towing your vessel made no change of her heading after she entered the Schuylkill River until after the collision?

A. Not as far as I seen.

Q. It has been testified here that two sets of one-whistle signals were exchanged between your tug and the "Gulftrade." You do not know whether you heard those or not, do you?

A. What is that?

Q. These whistle signals?

A. I heard them.

Q. Did you hear the "Gulftrade" blow a one-whistle signal before she turned into the Schuylkill River?

A. One whistle?

Q. Yes?

A. No.

Q. Didn't you hear your tug blow one whistle in reply to that signal?

A. No, I didn't hear it.

Q. After your tug and the tow had got into the Schuylkill River, didn't you hear the "Gulftrade" blow a one-whistle signal, and your tug answer it?

A. No, I heard whistling but I didn't hear what they was. All I heard was signal whistles.

Q. These were signal whistles?

A. Danger whistles are what I have reference to.

Q Who blew danger whistles?

A Both of them

Q When was that?

A Before they hit the collision.

Q. You heard the tug and the "Gulftrade" both blow danger signals, did you?

A. Yes.

Q. Now, about the channel—what is the width of the channel?

A. Between buoy and buoy?

Q. Yes.

A. As near as I can judge, about 200 feet.

Q. Have you ever sounded there?

A. No.

Q. You mean the space between those two buoys is about 200 feet?

A. As near as I can give it to you.

Q. After you get in by the buoys, what is the width of the channel there, do you know?

A. No, I don't.

Q. As a matter of fact, you have never piloted a vessel in and about the channel?

A. No.

Q. You have never sounded there?

A. No, I never piloted no deep-water vessel in the mouth of the Schuylkill.

Q. You don't know the width of the channel, do you?

A. No, not at that rate, I don't.

Q. Was it right after the collision you anchored your vessel?

A. Yes.

Q. You say she was then about 150 yards inside the buoys?

A. Yes. That is when I had my anchor down.

Q. And after your boat had swung to the flood tide?

A. Yes.

Q. How big was your boat?

A. She carried about three hundred and ten or fifteen ton.

Q. How long was she?

A. I don't remember at the present time.

Q. What was her beam, do you know? How wide was she?

A. I would have to guess at it—about 24 feet.

Q. What was her approximate length?

A. I guess her length would go about 80 or 90 feet.

Q. How much chain did you have out on the anchor?

A. About 50 fathom.

Q. After the collision did you see the tug "Churchman" around there?

A. Yes.

Q. Did she come down to you?

A. To me?

Q. Yes.

A. No.

Q. You saw her going to the other boats?

A. Yes, she was at the "Gulftrade."

Q. When was your attention first attracted to the "Gulftrade?" When did you first see her?

A. Well, right as we got into the mouth of the Schuylkill when I was talking to the captain of 18 at my port corner.

Q. Had you passed inside the buoys then?

A. Just about at the buoys.

Q. You saw the "Gulftrade."

A. Yes, when I was talking to the captain of 18 at my port corner.

Q. How far away was she then?

A. About 15 or 20 yards.

Q. That is less than the length of your boat, isn't it—15 or 20 yards?

A. Well, no, not quite.

Q. Is your boat only 15 to 20 yards long?

A. About 80 or 90 feet.

Q. I asked you how far the "Gulftrade" was away when you first saw her, and you said 15 or 20 yards, so she was less than the length of your boat away?

A. Yes, something on that order.

Q. I mean the "Gulftrade" was less than the length of your boat away from you?

A. Away from this other boat, not from me, away from the other boat—from 33.

Q. How long was 33?

A. Much longer than what I am. I don't know how long she is now at the present time. She is the same length now as she was then.

Q. How far was the "Gulftrade" away from you?

A. It was the length of 33, and then about 15 or 20 yards besides that, if that is the question.

Q. You saw how she was heading?

A. The Gulf boat?

Q. Yes.

A. Heading right into the tow.

Q. What boat of the tow was she heading at?

A. Heading right for 33.

Q. You continued to watch her, didn't you?

A. Sure.

Q. You saw the collision?

A. I seen the "Gulftrade" hit 33 right on the starboard corner, the after starboard corner, the stern.

Q. The after corner?

A. Yes.

Q. Is that the only place she hit 33?

A. Yes.

Q. You say she did that with her bow?

A. Not exactly with her bow; about ten feet from her bow; what I would call her bilge.

Q. You mean her bluff?

A. Yes.

Q. That knocked 33 aside?

A. Broke all the lines—broke forty-four's lines, and thirty-three's lines.

Q. Then she came up you say, and hit 18?

A. Yes.

Q. And where did she hit 18?

A. About four or five feet from the starboard corner, right on the bumper.

Q. Aft.

A. Aft.

Q. She turned 18 around?

A. She hit him such a shot, she never touched him no more, and sent him right up along the starboard side of the ship.

Q. She shot him right across her bow?

A. That is right.

Q. You were not noticing the tug after you saw the "Gulftrade" this first time you told us about?

A. Watching our tug?

Q. Yes.

A. I was only watching it going up the river with the tow, before she hit the tow.

Q. Here is what I am asking you; you said when you first saw the "Gulftrade" she was the length of 33, and 15 or 20 yards farther than that from you; you thought there was going to be a collision and you watched her—you watched her down to the point of collision, and saw the collision. That is true?

A. Yes.

Q. You were not watching your tug during that time, were you?

A. No, I was not watching the tug during that time, but previous to that the tug was going all right. Then I looked around and I see the hawsers parting, and the tug was going right then.

Q. After the collision she was going all right?

A. Yes—because I got right up on my cabin when I seen she was going to hit us. It didn't look healthy for me. I said it wasn't no place for me.

Q. Didn't the breaking of these lines in the collision pull the tug out of her course?

A. No, not to my knowledge.

Q. Do you know whether they did or not?

A. No, I couldn't say.

Q. I want to ask you this question which may be a repetition. As your tug and tow entered the mouth of the Schuylkill, came in by these buoys, you were standing on your boat facing towards the east talking with Captain Knowles. That is right, isn't it?

A. Right.

Q. While you were standing in this position talking to Captain Knowles, you saw the "Gulftrade."

A. Right.

Q. At that time she was the length of No. 18, and 15 or 20 yards away from you?

A. No, you have got that wrong—the length of 33.

Q. Of 33, that is what I mean—and 15 or 20 yards away from you?

A. Yes.

Q. You thought then there was going to be a collision?

A. Sure.

Q. You stood there and watched her?

A. I got up on the cabin. I could look all around.

Q. You watched her, didn't you?

A. Yes, watched her.

Q. And continued to watch her until the collision?

A. Well, I could look all around.

Q. I am asking what you did do?

A. Yes, I was watching her.

Q. You saw the collision?

A. Right.

Q. Immediately after the collision you anchored your boat, and after your boat had swung to the flood tide, up the river, you were about 150 yards this side of the buoys?

A. About that, as near as I can judge.

Q. When I said 150 yards I meant inside of the two buoys. That is right, isn't it?

A. Yes.

Q. That is up the river?

A. Up river, that is right.

Cross-examined.

By Mr. Dawson:

Q. As I understand your testimony, you were in the channel all the time from the time you first saw the "Gulftrade" till after the collision. Is that right?

A. Yes.

Q. Can you tell me about what the angle of collision was between the bow of the "Gulftrade" and the stern of 33?

A. I could draw it for you.

Q. Do you know how many degrees there are in a right angle?

A. It was on an angle, as near as I can give you—not quite a forty-four.

Q. You mean about half a right angle. Do you know what a right angle is?

A. No, I don't.

Q. Do you know how many degrees there are in a right angle?

A. No.

Q. There are 90 degrees in a right angle?

A. I would sooner point it out to you.

Q. All right, point it out. I want the angle of collision between the bow of the "Gulftrade" and the stern of 33?

A. That is about the angle the ship went into 33 (drawing on a sheet of paper). Do you want more than that?

Q. That means nothing to me?

A. I will draw the tow then. (Drawing further.)

Q. Will you indicate on the diagram which you have drawn the bow of the "Gulftrade" at the time you saw it hit the 33?

A. It hit the stern there, about in there. (Indicating.)

(The drawing of the witness was marked for identification "Gulftrade Exhibit A 8-11-26.")

Q. The angle of collision was about half a right angle?

A. Something on that order, yes.

Q. Was the angle of collision between the bow of the "Gulftrade" and the stern of 18 about the same?

A. What did you say?

Q. Was the angle of collision between the bow of the "Gulftrade" and the stern of the barge 18 about the same?

A. No. When this boat hit these two, shoved these out of the road, he come on up at that angle, and got this fellow in there.

Q. About on the same angle?

A. Yes, about on the same angle, and shoved them out of the road.

Q. And hit the stern of the square-end barge 18?

A. Yes, about four or five feet of the starboard corner.

Q. That is about four or five feet from the stern of the starboard after corner?

A. Yes.

Re-direct examination.

By Mr. Brown:

Q. You are on one of these lighters now, aren't you?

A. Yes, sir.

Q. How long have you been on her?

A. I have been working for the firm about three years or four years.

Q. You have been continuously on the water for four years?

A. Yes.

Q. How long had you been on the water prior to this collision?

A. About one year.

Q. Prior to that time what were you doing?

A. I couldn't tell you—different things. I was working in Cramps' previous to that.

Q. You had been on the water before as lighterman?

A. Yes, and galley and so forth.

Q. How long before your employment on the No. 53 was your last previous employment on the water as lighterman, or as a deckhand, or in any capacity?

A. I was eight months on the barge "Hartman" till we tied her up.

Q. How long ago was that?

A. That was just when the war broke out, the foreign war between Germany and Russia. I was in Baltimore that time.

Q. You have been on the water off and on for the last 40 years?

A. Yes.

Q. With regard to the time of entering the mouth of the Schuylkill and the time of the collision, did you look at a clock; or are those times merely what you think the time was?

A. No, I can't say that I looked at the clock. I think I looked at the clock somewheres about the time the collision happened somehow. I don't know how it was. But I judge it was around three o'clock.

Q. By the way, are there any rudders on these lighters?

A. No.

Q. As far as the distances you have given are concerned, and the width of the channel, and that sort of thing—you have never measured them, have you?

A. No, sir.

Q. They are your best estimates of what the distances are?

A. Yes.

Q. When you first saw the "Gulftrade" did you see any tugs alongside of her?

A. Yes, there was tugs alongside of her.

Q. How many?

A. The "Churchman" was the only one I seen.

Q. Where was she?

A. When she went up by me, she was trying to shove the boat away from me.

Q. Did you see the "Churchman" alongside of the "Gulftrade?"

A. Yes, when she went by me. Before that I didn't see her.

Q. Where was she alongside of the "Gulftrade"—alongside of the bow, or stern, or where?

A. The bow, shoving the bow away from me.

Q. When was this?

A. After the collision.

Q. Did you see any other tugs around there?
A. The "Triton" I think was there.
Q. Where did you see her?
A. At the stern.

By Mr. Long:

Q. Did you testify before the United States local inspectors here at the time they investigated this collision?
A. Yes, sir.

(Meeting adjourned.)

(Depositions on behalf of the libellant, taken at the office of Acker, Manning and Brown, Esqs., Packard Building, on Wednesday, October 6, 1926, at eleven A. M. by agreement.)

(It is agreed that the depositions may be taken stenographically, reduced to typewriting, and copies furnished opposing counsel; that signatures of the witnesses and notary be waived; as well as formal filing; and that the costs of taking and transcribing the depositions may be a taxable disbursement in the cause.

PRESENT:

EVERETT H. BROWN, JR., ESQ., for the libellant;
HOWARD M. LONG, ESQ., for Tugs "Triton" and "Churchman;"
H. ALAN DAWSON, ESQ., for the S. S. "Gulftrade."

CLIFTON REDDISH, having been duly sworn according to law was examined and testified as follows:

By Mr. Brown:

Q. How old are you?
A. Thirty-two.
Q. Where do you live?
A. Mardella Springs, Maryland.
Q. On October 1st, 1923, were you employed by the Charles Warner Company, as deck hand on the tug "Taurus?"
A. Yes, sir; I was.

Q. How long were you on her?
A. I don't know just how long I was there.
Q. About how long had you been on her then?
A. Somewheres around three or four weeks.
Q. Had you ever been on tugboats before this time, as an employee I mean?
A. No, sir.
Q. You were never a member of the crew of a tugboat before you took this job?
A. No, sir.
Q. What is your occupation now?
A. I am working in a pickle factory.
Q. Where?
A. At my home, Mardella Springs.
Q. Were you on duty on October 1st, 1923, at the time of the collision?
A. Yes, sir.
Q. What time did you go on duty?
A. Twelve o'clock.
Q. Noon?
A. Yes, sir.
Q. Where was your tug at that time?
A. She was somewhere around Hog Island where they were working there.
Q. In what river?
A. Delaware River.
Q. Did your tug have a tow?
A. No, sir; not then.
Q. When did she pick up her tow?
A. That afternoon.
Q. Do you know what the tow consisted of?
A. Gravel and sand barges.
Q. Scows?
A. Yes, sir.
Q. How many of them were there?
A. Four.

Q. Do you remember the numbers of those scows?

A. There were the 18 and 53, which were behind the tugboat; the 33 was behind the 18, and the 44 was behind the 53.

Q. There were four barges in the tow?

A. Yes, sir; in two pairs.

Q. How long were the lines from the tugboat to the first two barges?

A. I don't know as I could tell you exactly but somewhere about sixty feet.

Q. After the tow was made up what did the tug and tow do?

A. They started for the Schuylkill River; started up.

Q. What did you do there while your tug was going up?

A. After the lines were made fast I just walked around the deck there.

Q. Did you hear any whistle signals as the tug and her tow were proceeding up the river?

A. I heard one.

Q. One what?

A. One whistle.

Q. Do you know where the tug and tow were at that time; your tug and tow?

A. We were somewhere around the mouth; I don't remember whether we were right in the mouth then or not.

Q. Of what?

A. The Schuylkill River.

Q. What did you do when you heard that one-whistle signal?

A. I looked up and saw the steamer "Gulftrade."

Q. Was that the steamer who blew the whistle?

A. It was.

Q. Did you hear any whistle after that?

A. The tug "Taurus" answered it.

Q. With what?

A. One whistle; same thing.

Q. Could you tell about how far away from the "Taurus" the "Gulftrade" was then?

A. She was not so far away but I could not tell you just what the distance was.

Q. Was the steamer astern of your tug and tow then?

A. Yes, sir; she was astern of us then. She was not right astern of us; she was coming on the side.

Q. On which side?

A. On the right side coming in the river.

Q. How was the tug and tow proceeding at that time, if you know?

A. We were coming up the western shore.

Q. Of what?

A. Of the Schuylkill River.

Q. What happened after that?

A. While I was standing on the deck I looked a few moments afterwards and I seen the ship and I thought the steamer would go by us all right, and again I looked and I saw that she was coming in towards our barges, and I saw that something was going to happen, and at that time the four blasts of the whistle were blown.

Q. Who gave the four-blast signal?

A. The tug.

Q. What tug?

A. The "Taurus."

Q. Go ahead and tell what happened then.

A. Then she hit the No. 33 a glancing blow.

Q. Who hit the 33?

A. The steamer "Gulftrade."

Q. That was the steamer that blew?

A. Yes, sir; the first whistle.

Q. Which side of the 33 was hit?

A. The right side.

Q. What happened to the 33?

A. She broke away from the 18; then the ship struck stem foremost and turned her over.

Q. What happened to the 44?

A. She went ashore.

Q. Where?

A. On the West shore.

Q. Of what?

A. Of the Schuylkill River.

Q. Did you hear any other signals blown except the two signals of one blast, one by the steamer and one by your tug, and the four whistles by the "Taurus?"

A. No, sir.

Q. What happened to the 18?

A. She capsized.

Q. What did your tug do then?

A. We tried to get to the man who was overboard; took the tow lines off the 53 and 18 and then reversed her engines and then went ahead and backed and tried to get to the man who was overboard.

Q. Where did your tug go in trying to get to this man who was overboard?

A. We were trying to get to the 18 which was capsized.

Q. On which side of the "Gulftrade?"

A. On the right hand side of that steamer.

Q. Do you know the position of the buoys at the time of the collision?

A. No, sir. I cannot say just where we were at the time of the collision. I know that we were in the Schuylkill River.

Q. Did you notice any change in the course of your tug and tow after the first whistle signals were exchanged?

A. No, sir; I did not.

Q. On which side of the channel were your tug and tow proceeding?

A. On the Western shore; left side.

Q. Could you estimate how far you were from the Western shore?

A. I do not know how many feet; we were not far from the Western shore; but I could not give you that distance in feet.

Q. When you looked at the steamer the second time, after the first whistles were blown and answered, what was she doing?

A. I thought at first that she was going to go past of us all right, but in a moment or two she turned right in towards the tow.

Q. At that time where was she with reference to your barges?

A. She was just a few feet back of us. She came right on up and struck a slanting blow on the 33. She just seemed to be eating her way in.

Cross-examination.

By Mr. Long:

XQ. You said that you were 32?

A. Yes.

XQ. Your present employment is in a pickle factory at Mardella Springs?

A. Yes, sir.

XQ. Where is that?

A. 12 miles below Salisbury.

XQ. On the Virginia line?

A. No, sir; on the Maryland line.

XQ. Do you know the date of the collision?

A. I will not say just exactly the day.

XQ. What year?
A. 1923.
XQ. Of what month?
A. October, was it not?
XQ. I am asking you?
A. I said October.
XQ. What part of October?
A. I don't remember just the day.
XQ. Was in the middle, end or fore part?
A. I think that it was somewhere around the first.
XQ. 1923?
A. Yes, sir.
XQ. How long had you been on the "Taurus" then?
A. Somewhere around four weeks; I don't know exactly.
XQ. When did you leave the "Taurus?"
A. I don't just remember the day.
XQ. How long after the collision?
A. Just a few days.
XQ. That was the only experience you had on a tugboat?
A. Yes, sir.
XQ. On any tug?
A. Yes, sir.
XQ. What work had you been doing before that?
A. Farmer.
XQ. What work have you been doing since?
A. Working in the pickle factory.
XQ. How many times had you been up the Schuylkill before the day of the collision?
A. Most every day and sometimes twice.
XQ. How many times altogether?
A. I couldn't say just how many times.
XQ. How many deck hands did you have on the "Taurus?"

A. Two; a double shift.

XQ. What was your watch?

A. From twelve to seven, and then from twelve to seven in the morning.

XQ. Where was the "Taurus" when you went on watch at twelve o'clock that day?

A. Somewheres around Hog Island.

XQ. Where were you bound?

A. We got the barge from the dredge and then when the barges were got ready we started up.

XQ. What dredge was it?

A. The Delaware Dredging Company.

XQ. When you started on this trip up the Schuylkill from what point did you start?

A. We started when the tow was made up, just right around the dredge there; of course they might have been anchored out there, but we got them and started up.

XQ. Do you mean that you took the barges right from the dredge?

A. I don't mean right at the dredge; it was anchored out there.

XQ. You got your tow ready?

A. Yes, sir.

XQ. Did you make up your tow opposite Hog Island?

A. Right there; right close around there.

XQ. On the Pennsylvania side of the channel?

A. It was not in shore if I remember right.

XQ. Was it on the Pennsylvania side of the channel?

A. It was not in shore if that is what you mean.

XQ. It was in the Delaware River?

A. Yes, sir.

XQ. Was it nearer the Jersey or the Pennsylvania side?

A. Nearer the New Jersey side if I remember right.

XQ. What time did you start up with the tow?

A. I don't remember just what time it was; it was in the afternoon, though.

XQ. Was it late in the afternoon?

A. No, sir; it was not late.

XQ. Do you know how the tide was when you started?

A. It was flood tide.

XQ. After you came on duty at twelve o'clock what work did you have to do?

A. Tending to the lines.

XQ. Was the other deck hand on duty?

A. No, sir; the fireman was supposed to be the other deck hand; we were supposed to make the lines fast.

XQ. Who was the fireman?

A. I don't know his name.

XQ. Was the captain of the "Taurus" on watch after twelve o'clock?

A. He went off watch at twelve o'clock and the mate was in charge of the pilot house.

XQ. What was the mate's name?

A. I don't remember his name now; I know that he had a funny sort of name.

XQ. Where did the captain go when he went off watch?

A. I suppose that he went to his berth.

XQ. When did you next see the captain after you saw him go off watch.

A. After the collision; after the steamer had hit the barges.

XQ. Where was he then.

A. He was on deck.

XQ. What deck?

A. Up on the top deck.

XQ. Did you see where he came from?

A. No, sir.

XQ. After you came into the Schuylkill River that afternoon, what duties did you have to perform, any?

A. Nothing except to attend to my lines.

XQ. Where were you?

A. Walking around the deck.

XQ. On the forward deck or after deck?

A. Walking back and forth around the stern on the deck. I had attended to the lines then.

XQ. You were standing on the after deck of the tug watching the lines to these lighters; is that correct?

A. Yes, sir.

XQ. And while you were there you heard the one-blast signal from the "Gulftrade?"

A. Yes, sir.

XQ. Then you heard the "Taurus" answer that?

A. Yes, sir.

XQ. How far was the steamer away from you then?

A. She was not so very far.

XQ. How far, the length of the steamer or twice it or how far?

A. I suppose about a length or a length and a half.

XQ. Did you not hear the steamer blow again as you were coming along there?

A. I just heard the one whistle from her; that is all that I heard.

XQ. It has been testified here that there were three whistles blown by the "Gulftrade" and answered by the "Taurus;" don't you remember them?

A. No, sir; only one whistle blown by the steamer and answered by our tug and then four whistles by our tug.

XQ. You say that you saw the steamer when you looked and that she was on your right-hand side coming up the Schuylkill River?

A. I mean the right-hand side of the "Taurus" as she came up there.

XQ. You mean as you stood there looking up?

A. Yes, sir; right hand side coming up.

XQ. Did you see the buoys as you came into the Schuylkill River?

A. I seen them but I never paid much attention to them.

XQ. What were those buoys?

A. One was red.

XQ.What was the other one?

A. Black that I know of: I never paid so very much attention to those buoys down there. I had nothing to do with them.

XQ. What kind of buoys were they?

A. One was red and one black.

XQ. Spar buoys or can buoys?

A. I don't know; I never paid enough attention to them to tell about that.

XQ. As you came in there was the black buoy on your right or left, and which side was the red on?

A. I don't remember.

XQ. Did you come in there between the buoys?

A. Yes, sir; you have to to get in.

XQ. How do you know?

A. Because they are supposed to mark the channel there and the captain told me that you have to go between them so as to get in there.

XQ. Which buoy were you nearer to; the red buoy or the black buoy?

A. We were nearer to the one on the Western shore.

XQ. Which is the Western shore as you come in there?

A. The one on the left.

XQ. How near to it did you go?

A. We were close to it; we kept over there.

XQ. How close were you to it?

A. We were very close to it; I don't know just how many feet we were from it.

XQ. One or two lengths of your tug or how?

A. I don't know how many feet; I can't say.

XQ. As a matter of fact you were not paying much attention to what was happening, as your duties were to pay attention to the lines?

A. I was back there and had my eyes on what was happening around there; but I was not navigating the tug.

XQ. You looked to see if the lines were all right?

A. They were all right; I looked at them.

XQ. Did you stand there until after the collision?

A. Yes, sir; I had nothing else to do.

XQ. Kept standing there right on the stern of the tug?

A. I was back there; I would not say that I was standing still all of the time.

XQ. You were walking back and forth on the stern of your tug watching the lighters?

A. Yes, sir.

XQ. When you say that you thought that the steamer was going past all right, had the steamer then come up on even terms with tug?

A. No, sir; not then.

XQ. How far away was she then?

A. A few feet away.

XQ. How much off your right was she then?

A. It looked to me then as if she had room enough to pass; enough space then.

XQ. Was that as much as fifty or sixty feet?

A. No, sir; I don't know as that much; it might have been less and perhaps more; it seemed to be enough to me.

XQ. It might have been as much as fifty or sixty feet; perhaps more and perhaps less?

A. Yes, sir; it might have been more or less.

XQ. You are not able to give us any better estimate?

A. No, sir.

XQ. I am speaking about the clearance between the steamer and your tug and tow?

A. I should say that there was room enough for her to go by.

XQ. You considered that she would go by safely then?

A. Yes, sir.

XQ. Did you notice, after you saw the vessels in that position, that your tug and tow swung out towards the middle of the channel?

A. No, sir; I never said that our tow swung out there.

XQ. You don't know anything about the depth of water there?

A. No, sir.

XQ. Nor the width of the channel?

A. No, sir; nor how wide it was.

XQ. And you can't make any estimate of those things?

A. No, sir.

XQ. Nor can you estimate how far you were from the western shore?

A. Except that we were well over there.

XQ. What is there on the western shore?

A. Nothing but a bank.

XQ. Did you notice a jetty over there?

A. I just noticed the bank.

XQ. All of the time that you have been passing there you never noticed the jetty?

A. I never paid any attention to it.

XQ. Can you give us any estimate at all how far you were from the western shore?

A. Forty or fifty feet; she may have been closer.

XQ. From the bank?

A. Yes, sir; maybe a little more.

XQ. You mean the western shore?

A. Yes, sir; left-hand side as you go there.

XQ. When did you notice first that the steamer was coming to your tow, before or after the four whistles you had blown as you say?

A. That was before.

XQ. Just before?

A. Just a moment or two.

XQ. Where were you standing on the tug then?

A. On the back part of the tug right near the stern on the side.

XQ. On which side?

A. I was there walking backwards and forwards.

XQ. On the stern?

A. Yes, sir.

XQ. Did you stay on the stern there until after the collision?

A. Yes, sir.

XQ. Did you see any tugs alongside of the steamer?

A. I seen one; on the port side.

XQ. Where was she?

A. She was kind of forward on the ship.

XQ. Did you see another tug alongside the ship?

A. I never paid any attention; I just seen one there.

XQ. Don't you remember seeing another tug there?

A. I remember seeing this one tug alongside the steamer before she struck.

XQ. Just astern of that tug didn't you see another tug?

A. I did not pay any attention to any more tugs.

XQ. On which side of the steamer was that tug?

A. Left side coming in.

XQ. Do you remember before the collision that your tug cut across the bow of the "Gulftrade?"

A. No, sir.

XQ. You don't remember that?

A. No, sir.

XQ. You said that you saw the "Gulftrade" strike the 33?

A. Yes, sir.

XQ. What kind of a blow did she hit her?

A. Kind of glancing blow.

XQ. Forward or aft?

A. It was not way aft; kind of forward.

XQ. A little way forward?

A. Not right at the stem. It was kind of near the forward part of the bow.

XQ. Which side?

A. Right side.

XQ. That is she struck the forward part of the right side of the 33?

A. Yes, sir.

XQ. And the steamer glanced off?

A. Yes, sir.

XQ. Then she passed, didn't she?

A. She passed us after the 18 was struck.

XQ. Where did she hit the 18?

A. With her stem.

XQ. With the stem or bluff of the bow?

A. I call it the stem.

XQ. Do you know what the bluff of the bow is?

A. I don't know much about that.

XQ. The stem is the very furtherest point forward, and the bluff of the bow is where the bow rounds out like this. (Illustrating.)

A. I guess it was the stem.

XQ. What do you call the stem?

A. The stem is where the bow runs out like this. (Illustrating.)

XQ. That is the stem?

A. That is what I think hit her.

XQ. The steamer's stem hit the 18?

A. Yes, sir.

XQ. She hit the 33 first?

A. Yes, sir; and glanced away.

XQ. Was that the stem hit the 33?

A. No, sir; that was the bluff of the bow; the stem couldn't hit her and then glance off as she did.

XQ. How near was this tug that you saw to the steamer?

A. It was right alongside.

XQ. Made fast to the steamer?

A. Yes, sir.

XQ. Where was the 44 in that tow?

A. The 44 was beside the 33 next to the western shore.

XQ. That is what you call the left?

A. Yes, sir.

XQ. Do you remember any bells on your tug just before the collision?

A. I don't remember any bells.

XQ. Did you hear any bells on either of the tugs alongside of the steamer?

A. No, sir.

XQ. Was the only experience that you have had

on the water this experience that you had on the "Taurus?"

A. Yes, sir.

XQ. You do not know exactly the time of the collision?

A. It was somewheres around the middle of the afternoon. I don't know just the time.

XQ. Were these scows or barges deeply loaded?

A. Yes, sir; it looked like they were. Some would call them deep.

XQ. What were they loaded with?

A. Gravel.

XQ. You could see this gravel from where you were?

A. Yes, sir.

XQ. That came from the dredge?

A. Yes, sir.

XQ. Where did it come from; the dredge?

A. Yes, sir.

XQ. Where were you taking this gravel?

A. Up the Schuylkill.

XQ. Whereabouts?

A. I don't know just what points; several different places they used to take it.

XQ. Were those four whistles blown on your tug before or after the collision or at the time of the collision?

A. Before.

XQ. Just shortly before?

A. Just a few minutes before. Of course you can't tell just how long it was.

XQ. Was it immediately before?

A. Yes, sir.

XQ. In other words the whistles were blown and the collision occurred?

A. Yes, sir; a few minutes afterwards. That is after the whistles.

Cross-examination.

By Mr. Dawson:

XQ. After the collision the tug "Taurus" drifted down to the right hand side of the "Gulftrade;" that is the side we call the starboard; the right side?

A. Yes, sir; we were out in the channel because we broke our barges loose then.

XQ. The "Taurus" drifted down the right-hand starboard side of the steamer?

A. The right side; I don't know about the starboard side.

XQ. You don't know which is starboard and which port side of a vessel?

A. No, sir.

XQ. To use your term, the "Taurus" drifted down the right-hand side of the "Gulftrade?"

A. Yes, sir; she went on the right side after her lines broke.

XQ. Did you testify before the local inspectors?

A. No, sir.

Re-direct examination.

By Mr. Brown:

RDQ. You said that you were never on tugs before this; had you ever been on other vessels?

A. I have been down there in Jersey; I was down there this spring working on a dredge getting oysters in Maurice Cove.

RDQ. When you heard the first signal from the "Gulftrade" I believe you testified that you looked and saw her for the first time?

A. Yes, sir.

RDQ. Was it at that time that you thought that she would go by in safety.

A. Yes, sir; she looked safe to me coming in there.

RDQ. And it was after that you looked up the second time and saw her coming into the barges?

A. Yes, sir.

RDQ. Do you know whether or not, after the collision, your tug was under way; whether her engines were going?

A. Yes, sir. She was under way. We were trying to go back there to the barges; trying to get to the man who was in the water.

RDQ. Did you go ahead?

A. Yes, sir and backwards, and tried to get to the man and save him.

RDQ. Did you go ahead across the bow of the "Gulftrade?"

A. When she hit our tow she pushed the 18 out into the stream and it broke away and then we backed around there and tried to get to her and that would make her to the left of us.

RDQ. And then you went down the right-hand side of the "Gulftrade?"

A. Yes, sir.

By Mr. Dawson:

XQ. And the 18 also went down on the right-hand side of the "Gulftrade?"

A. Yes, sir.

JAMES DONNELLY, having been duly sworn according to law was examined and testified as follows:

By Mr. Brown:

Q. Where do you live?
A. 1625 Fillmore Street, Frankford.
Q. By whom are you now employed?
A. I am working for myself.
Q. What are you doing?
A. I am wiring houses.
Q. Electrical wiring?
A. Yes, sir.
Q. What papers do you hold for going to sea?
A. I hold engineer's papers, not for oceans but for lakes, bays and sounds up to 150 chief engineer, and first assistant engineer's papers up to 750.
Q. What experience have you had on the water?
A. Quite a lot. I was four years in the Navy and I was in the police boat for seven years.
Q. In what capacity?
A. Fireman and engineer.
Q. What position did you hold in the Navy?
A. First-class fireman.
Q. What other experience have you had on the water?
A. I worked for the city in working on a dredge in the Schuylkill.
Q. In what capacity?
A. Engineer on the dredge; I think it was the Dredge "Schuylkill."
Q. Have you had any other experience?
A. I worked over in the Bristol Shipyard, but that went up; the Government, through the Shipping Board, decided that they would not run that any

longer; and then I went to boiler-making for Jess Mahaffy.

Q. You were also employed by the Charles Warner Company?

A. Yes, sir.

Q. How long were you employed by them?

A. I don't remember exactly, but it was something like six months.

Q. In what capacity were you employed by the Charles Warner Company?

A. Engineer.

Q. On what?

A. On the "Taurus."

Q. Were you on any other vessels?

A. There were a few days that I worked on another tug, taking the place of a man who was sick.

Q. Have you had any other experience on the water that you have not mentioned?

A. No, sir.

Q. Do you remember the collision between the steamer "Gulftrade" and the lighter 18 in tow of the "Taurus?"

A. Yes, sir.

Q. Do you remember when it occurred?

A. That occurred, I judge, three years ago this month.

Q. Do you remember the exact date?

A. No, sir; I don't remember the exact date.

Q. It was October, 1923?

A. Yes, sir.

Q. What position did you hold on the "Taurus" at that time?

A. Second engineer.

Q. What time were you on duty that day?

A. From twelve o'clock to six?

Q. P. M.?

A. Yes, sir.

Q. Where was your tug at the time that you went on duty?

A. Lying off Mantua Creek, working around the dredge.

Q. In the Delaware River?

A. Yes, sir; they were dredging there at the time. About two o'clock we picked up four barges to proceed up the Schuylkill River.

Q. Do you remember what the barges were or not?

A. There was the 18, 33 and 44, and that other one in the lead beside the 18 I don't recollect.

Q. Do you remember how the tow was made up?

A. Yes, sir; the one whose number I can't remember was on the left hand side forward; the 18 was on the right-hand side forward; the 44 was on the rear left and the 33 was on the rear right.

Q. When did you pick them up and what did the tugboat do?

A. It was about two o'clock when we started up the Delaware, and as we passed Fort Mifflin I noticed two tugs lying in there at Fort Mifflin dock.

Q. What were they?

A. Afterwards they proved to be the "Churchman" and the "Triton." I did not know what they were at the time.

Q. Was there a steamer lying there?

A. No, sir; there was no steamer there at the time we were going by.

Q. You proceeded on up the river?

A. Yes, sir.

Q. Did you hear any whistles as you proceeded up the river?

A. No, sir.

Q. Heard none at all?

A. We were entering the Schuylkill, the mouth of the Schuylkill, right opposite the black buoy when we got one whistle.

Q. Where were you at the time?

A. I was sitting on the rail.

Q. Which rail?

A. The port rail. I very seldom sit on the opposite rail because that is away from the throttle. Where I was I could just reach in and touch the throttle.

Q. You heard a one-whistle signal?

A. Yes, sir.

Q. Do you know what vessel blew that?

A. Yes, sir; the steamer "Gulftrade."

Q. What did you see when you heard that?

A. That we were going on up.

Q. Did you see the steamer?

A. Yes, sir; I saw the "Gulftrade."

Q. Where was she?

A. She was just heading into the Schuylkill, following us on up there.

Q. Could you tell how far astern of you she was at that time?

A. Well, I should judge that she was in the neighborhood of 600 feet.

Q. What happened next?

A. Our pilot immediately blew one short whistle and went to the western side of the Schuylkill, to port. I waited a few minutes and I saw this steamer start to starboard, answering his one whistle, and then I concluded that everything was all right and I started below and started to oil up, which took a couple of minutes, and as I came up the ladder the engineer that had been off watch, was there and he threw open the cutoff to give her full steam, and he said to me, "That steamer is going to hit us."

I looked out the port engine room door and the 18 and 33 and 44 were all piled up there.

Q. Did you hear any other whistles blown?

A. No, sir; if there were any they were blown while I was down oiling.

Q. What did you do or hear or see?

A. I heard the captain running over the top of the house, hallooing "Get the man, cut the lines," and then we started to get bells to back and go forward. We were backing and pulling there, and while we were backing and pulling the "Gulftrade" went in back of us, hugging the western shore.

Q. Then where did your tug go?

A. We backed and pulled with our bow pointing to the eastern shore of the Schuylkill; we backed and pulled three or four times before we got around.

Q. Then what happened?

A. In the meantime there was a man who jumped overboard from the "Gulftrade" who tried to save the man who was in the water from the 18.

Q. How did that man get off the lighter?

A. He was knocked off, the lighter was abreast of the steamer, right in the middle of the Schuylkill.

Q. Did you see the capsized lighter?

A. Yes, sir; when we started to back I could see it out of the port engine room door.

Q. Did you notice, when you came up the river, before you went down to oil, what part of the river you were in?

A. Yes, sir; we were hugging the western bank, I said, "This damn fool is going to get on the western bank so as to give them plenty of room."

Q. To whom were you referring?

A. To our pilot. I thought that he was hugging the western bank too close.

Q. When you went down to oil was that the first time you had seen the steamer?

Mr. Long: Objected to.

A. I had seen her before and then everything seemed all right; she was heading to pass us. It looked as if her stern was swinging to the eastward and her bow to the westward, and while we were backing and pulling she headed possibly to the west bank while we were heading to the east bank.

Q. When you saw her after you came up from oiling was that before the collision?

A. Right at the time of the collision; I looked in time to see the 18 get toppled over.

Q. As I understand when you went below everything seemed all right?

A. Yes, sir; she was headed to pass us then.

Q. And when you came up?

A. She had changed so she came right into the 18.

Cross-examination.

By Mr. Long:

XQ. You say that you saw the tugs at the Fort Mifflin docks?

A. Yes, sir.

XQ. You did not know what they were doing there?

A. No, sir; but they usually lie there waiting for oil steamers.

XQ. You did not pay any attention to them?

A. No, sir; I did not know what they were then; I did not bother about them.

XQ. Where is the engine room on the "Taurus," amidships, forward or aft?

A. Amidships and pretty small at that.

XQ. Has it windows on each side?

A. There is a small window there.

XQ. On each side?

A. On both sides.

XQ. How big is the window?

A. I judge that is just about enough for a man to get his shoulders through; I don't believe it is over 18, not over 14 inches wide probably, and about two feet high.

XQ. The same size on both sides?

A. Yes, sir.

XQ. And there is a door on each side?

A. Yes, sir.

XQ. How wide is the door?

A. I guess that door would run twenty or twenty-four inches.

XQ. You mean the door on each side?

A. Yes, sir; double door.

XQ. Are those doors in the forward part of the engine room or after part?

A. Forward.

XQ. How high is that engine room, would you say?

A. Seven feet.

XQ. How long would you say that the engine room is, fore and aft?

A. I should judge from the front bulkhead to the end, 10 feet; it is a small engine room.

XQ. How wide athwartships?

A. I judge that it is pretty near square. I never measured it and I have been off the boat now for three years.

XQ. There is no window in the after part or forward part of the engine room?

A. No, sir; me and the engineer sleep in the after part; our bunks are there.

XQ. When you came on watch at twelve o'clock did you relieve the chief?

A. Yes, sir.

XQ. Where did he go then?

A. That I don't know.

XQ. He left the engine room, did he?

A. Yes, sir; but he was still on the boat; we were there and I walked around to see if the tow was all right.

XQ. After two o'clock did the engineer come into the engine room?

A. I am in charge. When I am on watch I am in charge. The United States Government holds me responsible for what happens in the engine room when I am in charge there.

XQ. You were responsible on this occasion from the time you came on watch until after the collision?

A. Yes, sir; from twelve to six and from the time we got under way I was right there.

XQ. You were right there to take any orders that you might get from your pilot house?

A. Yes, sir.

XQ. Those orders come down by bells?

A. Yes, sir.

XQ. Where was your throttle, on the starboard or on the port side?

A. On the port side.

XQ. How near to the door?

A. It ain't two feet from the door.

XQ. How far below the main deck?

A. The engine room is right there at the main deck.

XQ. Flush with the main deck?

A. Yes, sir. I can stand right there on the main deck and operate it.

XQ. How far from the port door is the port rail where you stood?

A. About two and a half feet.

XQ. From two o'clock until after the collision I understand that you were the only engineer in the engine room?

A. No, sir; while I was down oiling the engineer came into the engine room.

XQ. How long before the collision did the chief engineer come into the engine room?

A. Not so much time because when I came up from oiling I seen the chief engineer there and we were going ahead then but he took the cutoff off and gave her all the steam her engines could get and then he stepped outside and I stepped outside the port door after him in time to see the scow turned over.

XQ. So that in that emergency both of you engineers left the engine room?

A. I was right there.

XQ. But you said you stepped outside?

A. I was right there at the throttle.

XQ. You said that you and the chief engineer both stepped outside the engine room?

A. Yes, sir; I was on watch and just stepped outside the door to see what was going on.

XQ. Didn't you realize that a collision was about to happen then?

A. Yes, sir; but there were no bells given to the engine room.

XQ. Don't you realize that when the chief said, "She is going to hit us," that there was going to be a collision?

A. Yes, sir; and I had a right to see.

XQ. But both you and the chief left the engine room?

A. I said that I was right there at the door.

XQ. But you stepped outside the engine room?

A. Of course I had to step outside to see.

XQ. Don't you know that it was your duty to stay there?

A. I was right there to execute anything if the bells came down to me.

XQ. But you were more interested in seeing the collision than standing there and discharging your duties?

A. My engines were operating under full speed.

XQ. Answer the question?

A. My engines were operating under full speed; is that anything when an engineer stands where he can reach the throttle if any order comes to him?

XQ. You left no one in charge of the engine room when you went down to oil?

A. No, sir; but every day you oil up.

XQ. But you left your engine room and went down to oil with no one left in your place?

A. There never is any one left there on those small tugs; they don't have oilers; he goes down there to oil when he gets time.

XQ. When you got back, after you had gone down and oiled, you found the chief engineer in the engine room?

A. Yes, sir; taking the cutoff off, so as to give her all the steam possible.

XQ. Then the remark was made, "The steamer is going to hit us;" is that right?

A. Yes, sir.

XQ. Then you and the chief walked out of the engine room?

A. Yes, sir; I stepped out there with him as I have said.

XQ. You followed the chief out?

A. Yes, sir.

XQ. Before that you had been sitting on the port rail of your tug?

A. Yes, sir.

XQ. And you were sitting on the port rail when you heard the steamer blow the whistle?

A. Yes, sir; I was sitting on the port rail waiting to get an order.

XQ. How many whistles did you hear?

A. One from the steamer and one from our tug.

XQ. Where was the steamer at the time that you heard the one whistle; was she to your port or to your starboard?

A. To our port because we were in the Schuylkill and she was coming in.

XQ. To your port?

A. Yes, sir.

XQ. And about six hundred feet away, you said?

A. Yes, sir.

XQ. So that she was considerably over her length away from you then?

A. Yes, sir; from us.

XQ. You expected her to pass safely?

A. Sure, I did.

XQ. She was going to pass on your port side?

A. Yes, sir; we had blown one whistle to her to pass on the starboard side.

XQ. She was to your port at that time?

A. Yes, sir; because she was not in the river but was rounding in; that would throw her on the left side of us at that particular time.

XQ. Had she passed the buoy when she whistled?

A. I should say that she was about at the black buoy when she whistled.

XQ. You were in the Schuylkill River?

A. Yes, sir; then we were.

XQ. How far were you from the black buoy when the collision occurred?

A. That I can't say.

XQ. But you were there?

A. I was there in the engine room.

XQ. You said that you were sitting on the rail?

A. Yes, sir; but there were four loaded scows astern of me piled up with sand and gravel and I couldn't look over them. I could not see off there. And the bow shut me out.

XQ. But sitting there on your rail, as you were, you could see anything to the starboard or couldn't you?

A. I couldn't see anything low in the water.

XQ. Could you see the steamer in your position then?

A. Over to the port of us.

XQ. You always saw the steamer to your port?

A. Yes, sir; I saw her to port.

XQ. All of the time?

A. Yes, sir; she was to port of us all of the time.

XQ. Did you hear your tug blow four whistles?

A. I heard one whistle from her.

XQ. Did you hear your tug blow four whistles just before the collision?

A. I heard one whistle.

XQ. Just one whistle?

A. That is all.

XQ. From your tug?

A. That is all.

XQ. It has been testified that just before the collision your tug blew four whistles?

A. I don't know what the others testified to.

XQ. You heard one whistle?

A. Yes, sir.

XQ. And that is all?

A. Yes, sir; from our tug.

XQ. You heard the captain say, "Cut the lines?"

A. Yes, sir.

XQ. You are sure that was your captain?

A. Yes, sir; when I say captain I don't mean the man who had been at the wheel all that time, but the captain.

XQ. You heard him say that—"Let go the lines?"

A. I did.

XQ. Are you sure it was not the mate who said that?

A. I am sure it was the captain; he said, "Let go the lines; get the man; let go the lines."

XQ. Did they cut the lines?

A. I could not tell you.

XQ. You said that a man jumped overboard from the steamer?

A. Yes, sir; from the starboard side of the steamer.

XQ. Jumped overboard, did he?

A. Yes, sir.

XQ. How near was the steamer to your tug?

A. Then?

XQ. Had her bow come up with the "Taurus" then?

A. Yes, sir; because we were backing and pulling with our stern towards her.

XQ. How near was her stem to your boat at the time?

A. About one and a half lengths.

XQ. Of what?

A. Of a scow.

XQ. Those scows were about 150 feet long?

A. Some are and some are not; they are different lengths.

XQ. Would 200 feet be about right?

A. Yes, sir.

XQ. Was the steamer to your port or starboard then?

A. To the port of us.

Cross-examination.

By Mr. Dawson:

XQ. As I understand your testimony, you were sitting on the port rail of your tug, just opposite the engine room door, when you heard the exchange of signals of one blast between the "Gulftrade" and the "Taurus;" is that right?

A. Yes, sir.

XQ. After that you went down into your engine room to oil your engines?

A. No, sir; I waited a few minutes; when I considered that the steamer was going to pass the barges and that everything was all right and then I went down below and oiled up.

XQ. You said that you sat on your rail a few minutes before you went down; will you give us your best estimate of the number of minutes, if there were minutes, that you sat there before you went down to oil?

A. About four minutes.

XQ. Then where did you go, to oil your engines?

A. I went down into the lower engine room to do that.

XQ. Did you have to go into and through the upper engine room to go down to the lower engine room?

A. Yes, sir.

XQ. How did you get there?

A. I went down the iron ladder there; you can go down a forward ladder but you have to go around.

XQ. On this occasion you went through the upper engine room, and down a ladder to the lower engine room?

A. Yes, sir.

XQ. How many steps are there?

A. Six or seven, I suppose.

XQ. What is the height of the lower engine room, where you did your oiling, to the grating above?

A. Not more than seven feet.

XQ. After you got down to the foot of the ladder where did you go to oil your engines?

A. Everything is right there; the bearings and crank shaft and everything.

XQ. Tell us what you oil?

A. There are two main bearings and crank pin and your thrust bearing; you just squirt the oil there.

XQ. Do you put oil in cups there or how do you do it?

A. You just squirt the oil on the main bearings and crank pin and thrust bearings.

XQ. You had to take the oil can down there from the upper engine room, I suppose?

A. No, sir; we have an oil can in each room.

XQ. How long were you down there?

A. Only a few minutes; say three minutes.

XQ. Then you returned on the same ladder to the upper engine room, did you?

A. Yes, sir; I did.

XQ. And when you got there you found your chief engineer there trying to get more speed out of your engines?

A. He took the cutoff off so as to try and speed her up.

XQ. That was for the purpose of giving more power to the engines and more speed to the tug and tow?

A. Yes, sir; to try and do it.

XQ. And that was the time that the chief engineer said, "She is going to hit us?"

A. Yes, sir; he made the remark that the steamer was going to get us.

XQ. I think that you said that down to that time there had been no bells rung to the engine room to speed up the engines?

A. No, sir; we were running under full speed.

XQ. Am I right in understanding your testimony that no signals had been rung to your engine room down to the time that you had finished oiling up?

A. I had got no signals at all.

XQ. You had heard no signals down to that time?

A. There were none given because I was there to hear them if they had been given.

XQ. Of course you would have heard them while you were below in the engine room?

A. Yes, sir.

XQ. And while you were in the lower engine room oiling?

A. Certainly.

XQ. So that you are positive none came down?

A. Yes, sir.

XQ. So far as you know the chief engineer was trying to speed up the engine on his own authority without getting any orders to do that?

A. Yes, sir; he was looking out to do the very best thing that he could.

XQ. How long did you stay in the upper engine room talking to the chief, after you came up from below, or did you do anything else before you and he stepped out?

A. No, sir; no time at all; just time enough for him to try and give her more steam and then he stepped outside and I followed him.

XQ. Had the collision occurred at the time you then got out on deck?

A. At the time that I got out on deck I saw the scow 18 getting toppled over.

XQ. So that you got out on deck just about the moment that the "Gulftrade" hit the 18?

A. Yes, sir.

XQ. How long did you stay out there on that occasion?

A. A very short time; not a minute.

XQ. Then where did you go?

A. I stepped right inside to the throttle.

XQ. Down to that time you had received no orders from your pilot house with respect to your engines?

A. No, sir.

XQ. How soon after you got back to the engine room, after the collision had occurred, did you get an order from your pilot house?

A. I judge that it would not be a minute.

XQ. What order did you get then?

A. Stop. Just then the captain went over the deck and hallooed, "Cast those lines off; cut them off; get the man."

XQ. That was just about the time that you got the order to stop?

A. Yes, sir.

XQ. Going back to the time that you and the chief stepped out on the port side, was the tug "Taurus" on the starboard side of the "Gulftrade?"

A. No, sir; she was hugging the western side of the Schuylkill, which would be starboard the way she was heading in.

By Mr. Brown:

XQ. The way who headed in?

A. Yes, sir; the way the "Gulftrade" pointed to the western shore.

By Mr. Dawson:

XQ. At that time the "Taurus" was on the starboard side of the "Gulftrade?"

A. Yes, sir.

XQ. And all of the backing and pulling on the part of the "Taurus" after that, was while the "Taurus" was on the starboard side of the "Gulftrade?"

A. Yes, sir; she went up to our stern; that would put her on the starboard side.

XQ. The overturned barge, 18, was also on the starboard side of the "Gulftrade?"

A. Yes, sir.

XQ. You say that you saw a man leap overboard from the "Gulftrade" and try to save a man from the 18?

A. Yes, sir.

XQ. From what part of the "Gulftrade" did that man leap?

A. It looked to me that he jumped from the main deck, amidships.

Re-direct examination.

By Mr. Brown:

RDQ. After you heard the one-whistle signal from the "Gulftrade" you looked up and saw her?

A. Yes, sir.

RDQ. And, as I understand your testimony, she was just rounding into the Schuylkill then?

A. Yes, sir.

RDQ. And she seemed to be to port of you then?

A. Yes, sir; she was rounding in; that would be to our port.

RDQ. You saw the "Gulftrade" go over a little bit to starboard and you then thought that she would pass you in safety?

A. Yes, sir.

RDQ. Then you went below to do your oiling?

A. Yes, sir.

RDQ. And the next time you saw her was at the capsizing of the 18?

A. Yes, sir; I saw her about the time that lighter was turned over.

RDQ. When you stepped outside the door of the engine room with the chief, were you in reach of your throttle?

A. Yes, sir.

RDQ. At all times?

A. Yes, sir; I was standing right there at the door and there was no trouble for me to run the engines.

RDQ. Before the chief engineer stepped into the engine room how fast were you going?

A. Under the jingle.

RDQ. That means what?

A. Full speed ahead.

RDQ. When you are going full speed ahead and throw the throttle wide open, how much effect does that have on the speed of your tug?

A. Practically nothing with a heavy tow like that. We had a very heavy tow in back of us.

RDQ. In other words it does not increase the speed of the tug and tow appreciably?

A. No, sir.

By Mr. Dawson:

RXQ. It would have increased the speed of your tug and tow except for the fact that there was such a heavy tow astern of you?

A. That is what I think.

By Mr. Long:

RXQ. And also because you tried to increase your speed too late?

A. The way it looked to me she was just about ready to hit then.

By Mr. Brown:

RDQ. Would that extra steam have any effect upon your speed, would you say?

A. Well, that is hard to say. It would throw your steam and you would have steam right to the end of the throttle; it is hardly ever worth while to try and increase that way.

RDQ. But when you are running full speed with your engines, would throwing your throttle wide open increase your speed materially?

A. Not that I know of.

By Mr. Long:

RXQ. One reason the tow is too heavy?

A. Yes, sir; no boat will do it because the slippage will slow the boat up.

RXQ. Do you know the percentage of slippage of the "Taurus?"

A. No, sir.

ADJOURNED.

Before Honorable Oliver B. Dickinson, J.

Philadelphia, Pa., Friday, October 8th, 1926.

Present:

Messrs. Acker, Manning and Brown (by Everett H. Brown, Jr., Esq.), for the Libellant.

Messrs. Burlingham, Veeder, Masten and Fearey (by H. Alan Dawson, Esq.), for the S. S. "Gulftrade," and Howard M. Long, Esq., for Gulf Refining Company, Respondents.

Mr. Brown: May it please the Court, this is a collision case involving a collision between a tow of sand lighters and a steamship in the Schuylkill River, just above the entrance to the river.

The Charles Warner Company, the owner of the lighters, is the libellant, and the respondents are the steamship "Gulftrade," the owner of the steamship, the Gulf Refining Company, the tug "Triton," which was one of the tugs assisting in the navigation of the steamship, her owner, the Independent Pier Company, and the tug "Churchman," which was also assisting the steamship, and the owner of the "Churchman."

The facts, briefly stated, are these: On the 1st of October, 1923, the tug "Taurus," owned by the Charles Warner Company, the libellant, made up

a tow in the Delaware River, off Mantua, New Jersey, consisting of four scows or lighters loaded with sand and gravel. The tow was made up on lines from the tug, about 100 feet in length, and the scows were two abreast and lashed together from the port side of one scow to the starboard side of the other; scow number 18 being on the starboard side forward. Next to her, to her port, in the first tier of scows, was the scow 53. Astern of the 18, and on the starboard side, was the scow number 33. To her port, and astern of the 53, was scow number 33.

The Court: Are the numbers of importance?

Mr. Brown: No, except to designate the scows. The tow got under way some time early in the afternoon, about 2 o'clock, and proceeded up the Delaware River.

The Court: Was there anything aft of the second scow?

Mr. Brown: There were only four; just four of them.

The Court: I mean two alength and two abreast?

Mr. Brown: Two alength and two abreast.

The Court: All right.

Mr. Brown: The tow got under way, and proceeded up the Delaware River, headed for the mouth of the Schuylkill. The mission of the tug was to deliver these scows to a wharf up near 49th and Bainbridge Streets.

As the tug and its tow came by the Fort Mifflin piers, those on the tug noticed two tugs, which afterwards proved to be the "Triton" and the "Churchman," evidently waiting to take a vessel up-stream, and as the "Taurus" and her scows neared the mouth of the Schuylkill River, she received a signal of one blast of the whistle from a vessel astern of the tow. At that time the witnesses differ as to the distances, but above the Fort Mifflin piers, and proceeded up the Delaware River, those on board the "Taurus" observed the steamship "Gulftrade" with the tug "Triton" lashed to her port quarter, and the tug "Churchman" lashed to her port bow. I suppose the fleets were then anywhere from a half mile to three-quarters of a mile apart. The tug "Taurus" answered with a one-whistle signal.

The Court: How was the tide?

Mr. Brown: The tide was flood. It was at the beginning of the flood tide, and running strong. I might say here—just so the Court can follow it, I will hand up the chart, which will be introduced in evidence, showing the entrance to the Schuylkill River.

The Court: Won't you give me the location of the two up to the time that you have mentioned in your description? You say she is still south of the mouth of the Schuylkill?

Mr. Brown: Still south of the mouth of the Schuylkill, and outside of the buoys.

The Court: Approximately what was their position, as you are now describing?

Mr. Brown: She had heeled over to the western shore to make the entrance to the Schuylkill River; that is, the "Taurus" and her tow; and the "Gulftrade" was proceeding up the Delaware, and was also bound into the Schuylkill River.

The Court: They were not meeting then?

Mr. Brown: No.

The Court: I thought they were approaching each other?

Mr. Brown: No.

The Court: All right.

Mr. Brown: After the exchange of these one-whistle signals, indicating the passage of the tug and its tow to starboard. I think the uncontradicted testimony is that the tug "Taurus" heeled over to the western shore, and entered the mouth of the Schuylkill River a little bit to the starboard of the black buoy at the entrance. The black buoy is on the port hand at the entrance.

The Court: You mean by that, then, that she was what you might call actually within the mouth of the entrance?

Mr. Brown: Not until after the first whistle signals were exchanged, but after they were exchanged

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The Court: Now, you spoke about the tug having the scows in tow, as I understand it?

Mr. Brown: Yes.

The Court: And cleared to the west, and had come up to a point near the black buoy?

Mr. Brown: She had been proceeding up the western side of the river, but in making the entrance ——

The Court: When you speak of the river, do you mean the Delaware or the Schuylkill?

Mr. Brown: The Delaware.

The Court: I was speaking about the Schuylkill, and I just wanted to make sure that I am following your description. The point you had reached was after, as I understand it, the tug towing the scows had heeled to the westward, and was approaching the buoys marking the entrance to the Schuylkill River, and was nearer the black buoy, which is on the west side of the channel?

Mr. Brown: That is correct.

The Court: All right. I got that.

Mr. Brown: And at that time ——

The Court: Now, if I am not disturbing you ——

Mr. Brown: Not a bit.

The Court: Your description is clear, but, of course, you have all these minor features in mind, and I do not, and I want you to make it clear to me. What was the destination of the steamer?

Mr. Brown: She was going up the Schuylkill River.

The Court: Oh, she was going up the Schuylkill River?

Mr. Brown: Yes; she was going up the Schuylkill River, to the Gulf Refining plant.

Mr. Dawson: Just below Penrose Bridge.

The Court: That makes your description perfectly clear.

Mr. Brown: They were both going up the Schuylkill River. After the exchange of the whistles, the tug and this tow entered the Schuylkill River, the "Gulftrade" and its tugs still being astern of them. Sometime after the "Taurus" had entered the Schuylkill, or was about entering the Schuylkill, that is, passing the black buoy, another one-blast whistle signal was blown by the "Gulftrade," which was answered by the "Taurus," still indicating a passage by the "Gulftrade" to the starboard of the "Taurus."

Our position, that is, the position of the libellant, without discussing at this time the testimony, because there will be more introduced, is that the "Taurus" and her tow, keeping well to the western shore—in fact, as far as she could with safety—proceeded up the Schuylkill, and that the "Gulftrade," entering the mouth of the Schuylkill, took a sheer, and without going into the details of just what preceded that sheer at the present time, it collided with the stern barge on the starboard side, hitting it a glancing blow, and running up into the 18, which

was the starboard barge forward, hitting it in the stern, somewhat inside of the starboard after corner, and throwing it around on the starboard bow of the "Gulftrade," capsizing it, and dumping its cargo, and incidentally—although this is not involved in this suit—losing the captain.

The Court: Won't you tell me, approximately, the width of the channel of the Schuylkill?

Mr. Brown: The width of the channel there, as I have checked it up on the chart, is about 135 yards in width.

Mr. Dawson: Where is that?

Mr. Brown: That is between the two buoys.

Mr. Dawson: It is about 380 feet.

Mr. Brown: Yes; between the two buoys. The number 44, which was the port hand stern barge, was shoved ashore by the force of that collision, and also ran forward into the number 53, doing some damage to her.

The point at issue, I think, is whether after the exchange of the one-whistle signals, the tug "Taurus" maintained her course and speed along the western shore, and the "Gulftrade," influenced by the flood tide at the entrance of the river and the slack water just inside on the western shore, sheered into the tow, or whether the "Taurus" changed her course and sheered across the "Gulftrade's" bow. I think that is about as fair a statement as I can make of the question involved.

The Court: Will you pardon me with another

question? Just before the tug went to the westward of the Schuylkill channel, to make room for the following steamer to pass the starboard scows, what was her position with respect to the middle of the channel? What I mean is, did that throw her athwart the channel?

Mr. Brown: No.

The Court: Or was the tow practically in line?

Mr. Brown: No; she heeled to the westward while still in the Delaware, and rounded that buoy well into the buoy, and the effect of the flood tide, I might as well say this now, because it comes out in the testimony, but without discussing it to any great length, the effect of the flood tide up the Delaware and into the mouth of the Schuylkill, just at the time they were rounding that buoy, had the effect of swinging those barges out somewhat toward the middle channel mark.

The Court: This is what occurs to me: The sweep of the tide, if she approached the west side, is going further out in the channel?

Mr. Brown: If you will just look at the channel here.

The Court: I understand that, but nevertheless the tide will flow nearer the shore than it will toward the channel.

Mr. Brown: Yes; it will probably as you get up to the buoy there.

The Court: But the effect of the flood tide would

have the effect on the after end of the boat or the tow?

Mr. Brown: Yes; until you get in slack water, and it was just at that point, just about as the tow was passing the buoy, and the tug was under the influence of a starboard helm, which would throw her stern to starboard, to pull the barges into shore, and then straighten out the ——

Mr. Long: You do not mean she ported her wheel. She threw her stern to starboard?

Mr. Brown: No; I said the barges.

Mr. Long: Of course, naturally when he ported, he naturally threw the barge to starboard.

Mr. Brown: Yes; it threw its stern to port.

Mr. Long: That is the important element of our case, and that is the reason I wanted it clear.

The Court: All right. Go ahead.

Mr. Long: Where did you say the collision occurred?

Mr. Brown: The collision occurred—I think it is the effect of all the testimony that the collision occurred inside of the buoys, the distance being estimated from 500 feet, more or less, by various witnesses, and close into the western shore. The reason I say that is because the force of the collision drove the 44 up on the bank.

The Court: And how with respect to mid-channel?

Mr. Brown: Close to the western shore, sir. I should say anywhere from ——

The Court: This chart belongs to somebody. Is there any objection to making a mark there? (Indicating.)

Mr. Brown: No.

Mr. Dawson: We do not agree on that point, you understand?

Mr. Brown: No; that is our statement.

The Court: I understand that is Mr. Brown's theory. You will notice a slight angle in the dotted line. Does that represent the western boundary of the channel?

Mr. Brown: Yes.

The Court: Approximately 250 feet?

Mr. Brown: Yes.

The Court: North of the black buoy?

Mr. Brown: Yes.

The Court: The point of collision, according to your theory, would be approximately three-quarters of that distance above the black buoy, would it, or two-thirds?

Mr. Brown: It is very difficult to estimate the distance, and all of the witnesses, as a matter of fact, give a different distance, but I should say it was in the vicinity of that angle.

The Court: All right. I will mark that with a "cross" mark and a ring around it.

Mr. Long: I understand Mr. Brown was ready to offer testimony. I do not know whether you want to hear a statement. I have three witnesses.

The Court: All right. You can do as you please.

Mr. Long: I will make a brief statement.

The Court: We will give you the option of either making a statement now or when you put in your evidence.

Mr. Long: If your Honor please, the tows that this "Taurus" was towing were not barges. You might call them lighters or scows. They had no rudders. They were very deeply laden. One of their witnesses say that his barge, number 33, had about three inches of free board. They were loaded with gravel. It appears from the testimony of their chief engineer that this tug had a tow, and it was about all she could tow up the river with a fair tide. One of their witnesses fixes the speed of the tow at about three miles over the bottom. The officers of the steamer ——

The Court: What was it through the water?

Mr. Long: They just gave us three miles over

the bottom. They did not say what it was through the water.

The Court: If they were not going faster than three miles an hour, they would hardly have steerage way.

Mr. Long: The tide was a knot or a knot and a half, they tell me, sir. We were waiting for the steamer. Our tugs were at Fort Mifflin. We had this job of assisting this steamer up the Schuylkill River to the plant of the Gulf Refining Company, which is at Girard Point. The tug and the two were bound further up the river at 49th Street.

We got alongside of this steamer at about Fort Mifflin. The "Churchman" was made fast to our port bow, and the "Triton" was made fast at her port quarter. The stern of the "Churchman" and the stern of the steamer were about on even terms. The engines of the tug were not set in motion ——

The Court: Let me interrupt you to ask another question. How much water were these vessels drawing?

Mr. Long: I was going to come to that, sir.

The Court: Very good.

Mr. Long: From the testimony of the libellant, it would appear that the tug's draft was about eight feet, and the deepest draft they give for her scows is from eight to nine feet. The draft of our steamer was 27 feet, and she was a vessel 400 and some feet long—445 feet long, I think—and 59 feet beam. She was quite a large tank steamer.

Now, after our tugs were made fast ——

The Court: She was pretty close to the bottom, was she not?

Mr. Long: Well, they take them up there drawing 30 feet. The "Donnel," of the Atlantic Refining Company, I think, is about the biggest steamship that goes up there, and she draws, when she is loaded, about 30 feet. Sometimes she gets up to 31. Of course, as Mr. Dawson says, the chart depths given there are mean low water with a rise of four or five feet of the tide.

The Court: Go ahead.

Mr. Long: When our tugs were made fast, the captain of the "Triton," which was made fast to the port quarter of the steamer, went on the bridge of the steamer, as is customary, and your Honor is familiar with the custom. The captain of the "Churchman" also went up on the bridge, leaving the tugs in charge of their first mates, both licensed men. The tugs' engines were not in motion. They were proceeding up there under the steamer's own power. It was a clear day, and the time of the collision, as I can best get it, is about 3 o'clock in the afternoon.

Now, we are proceeding there for something like a half a mile below the entrance of the Schuylkill River, below those buoys, with the tug and the scows proceeding on the ranges. Captain Fallon ordered a one-whistle signal to be given. Now, from that time and from the time we started, the first officer of the steamer was on the head, the second officer was standing aft, watching there. The captain, at the

time our men came, was on the bridge, but he left to go down to the toilet. The captain of the "Churchman" was on the bridge. The third officer was on the bridge, and Captain Bullard was there with the quartermaster. The reason I am mentioning those things, and the course they held, is because where there is some question of the manning of the vessels, of course, that becomes important. Now, as to the manning of this other tug, of the "Taurus," that is, the libellant's tug, the captain had gone off watch at 12 o'clock, and had gone to sleep. He had laid down in his room, which was aft of the wheel on the upper deck. The tug was in charge of her mate. The chief engineer was also off duty and the assistant engineer was in charge of the engines, and from his testimony, he was standing his watch sitting on the port rail of the tug, opposite the engine room. He said the throttle was right near the engine room, and he was sitting on the rail. One of the deck hands had gone off watch, and was standing on the stern watching the lines between the "Taurus" and the sand scows. The captain on the 33 was sitting there, talking, I think, with the fellow on 44, the 33 being the starboard lighter. Captain Knowles, the man who was drowned, of the 18, which was the forward starboard lighter, was talking to the man on 53. He was sitting there, talking.

In regard to the distance, I make it on the chart from Fort Mifflin to the Schuylkill is about three-quarters of a mile.

We were proceeding up at slow speed, and when we were about a half mile, we blew a one-whistle signal, and that was properly answered by the "Taurus." That signified, of course, that we were going to pass to the starboard, and that was acceded to, that maneuver, and then as we proceeded

up there, the "Taurus" was proceeding in the Schuylkill, we blew another one-whistle signal. That was answered by the "Taurus." Then, after we had proceeded, our witnesses say coming in there, we came near to the red buoy, the upper buoy, and we noticed that the "Taurus" was not giving us as much room as we thought we should have, and so we blew another one-blast signal, and that one-blast signal was answered by the "Taurus," and the "Taurus"—we proceeded, and when we got close to the rear lighters of the tow, the "Taurus" sheered over to her port. Our witnesses—I am anticipating the testimony—sheered to her starboard, sheered over toward us; I am anticipating what I expect our witnesses to say, in saying that if before that sheer the "Taurus" had held her course and our steamer had held ours, they would have passed safely, say, at about 60 feet. You see, at that time, both tugs were between the steamer, and this tow. One of the steamer witnesses said 50 feet. We will say 50 feet. But, anyway, they would pass safely. Now, this tug sheered over. One of the witnesses, I think, will tell you that that sheer was a sheer of about three points. She sheered so far over that those men on the "Churchman," on the port side of this steamer, forward—made fast forward—and on the "Triton" will testify that the "Taurus" and the number 18 passed out of their sight. The "Churchman" was made fast aft of the bow of the "Gulftrade," and the "Triton" was made fast aft of the "Churchman," and after the collision we found the "Taurus" and the number 18 over on the starboard bow, the other three barges drifting down by the port bow of the steamer, and the 33 comes down so close that the "Churchman" is ordered to cast loose to prevent a collision, and they finally beached 18 over

on the starboard side, that is the eastern shore, the right-hand side going up.

Now, when the tug boat took that shift, Captain Herbert, of the "Triton," ordered those tugs to hard aport, and go full speed, and at the same time ordered half speed on the steamer with the attempt to swing her and push her over more to the starboard, so as to avoid that collision. When the captain saw that that was not possible, he ordered the steamer's engines full speed with the result, some of the witnesses say, that he practically got the headway off the steamer.

After the scow 18 had gone around on her starboard side, she turned over, and one of the men from the steamer jumped overboard with a life ring in his hand in an attempt to save this poor fellow on the 18, but he was unsuccessful. The sailorman was picked up by the "Taurus." That is our contention: They going in there with a light tow, they have got more ample width of the channel than we have. I expect to show, your Honor, that they could have gone within 35 or 40 feet of the port bank, and navigated safely. We had a channel for our deep draft vessel, 47 feet, and practically 280 feet wide.

Now, as to the point of the collision, the tug's witnesses, as I expect to show to your Honor, fix the point a little less than two lengths of the steamer inside of those buoys, up the river, and our contention will be ——

The Court: Where with respect to the line of mid-channel?

Mr. Long: We were practically on the range. Your Honor will notice as you go in there, and I

will show your Honor just where those ranges are in coming into the Schuylkill River, but they do not follow them very long, because if they did, they will be thrown up on the starboard shore.

The Court: That range is practically mid-channel, is it not?

Mr. Long: Yes, but you have to leave it to make that swing. Our witnesses say we were running with the ranges slightly to keep to the eastward, slightly to starboard of the range line, and that we were over as far as we could get with our vessel.

The Court: At about how far above the buoys?

Mr. Long: They say a little less than two lengths of the steamer. The steamer is about 445 feet long, and I would say about 750 feet.

The Court: Then, as I follow you, you fix the collision at the same point up the river, they putting it to the westward of the channel, and you putting it slightly to the eastward of mid-channel; is that right?

Mr. Long: Yes, sir; they crossed our bows.

Now, the only testimony I could find in the testimony of the libellant is the testimony of the master of the 33, which anchored after this collision, and he said after he was anchored, his scow had tailed with the flood tide up the river, with 50 fathoms of chain out, his boat was about 100 to 150 yards inside of the black buoy.

The Court: Now, tell me what was the com-

bined beam of these scows; how much space was between them?

Mr. Long: Well, one man gives the length of the scow at ——

Mr. Brown: Here they are, accurately.

Mr. Long: Have you got them, sir?

Mr. Brown: Yes.

Mr. Long: All right. Answer the question.

Mr. Brown: The combined beam for the forward pair of scows was 26 feet for the 18, 28 feet for the 53. That is 54 feet.

The Court: We will call it 60 feet.

Mr. Brown: The stern 28.

Mr. Dawson: Both 28.

The Court: That is about 60 feet space.

Mr. Brown: Yes; they are all about the same.

Mr. Long: Now, the tug's length.

Mr. Brown: No; the breadth you want.

Mr. Long: No; the length.

Mr. Brown: The "Triton" is 19 feet, "Churchman" 56, and the steamer 55.

The Court: Approximately 90 feet, then?

Mr. Brown: Yes. 55 feet length of tug. The line between the tug and the first two scows was 100 feet. The two scows were 120 feet in length. Then there is four or five feet of line between the first lighter and the rear lighter.

Mr. Dawson: It makes about 400 feet.

Mr. Long: And then we have about 120 feet for the rear lighter. The length of the steamer was 445 feet.

Mr. Dawson: Almost 400 feet.

Mr. Long: There is one thing that I did not mention, that is important. The testimony says here that the man in charge of the "Taurus," at the wheel, Geddus, became a little anxious about the approach of the steamer toward the rear starboard barge, and he left his wheel, and went into the captain's room, which adjoins the wheel house, put his hand on him, and shook him, and got him awake, and then the captain came out, and this fellow went back to his wheel. At the same time the chief engineer and the assistant engineer walked out of the engine room and stood on the deck. It seems to me that is important, as showing the careless manner in which the tug was being navigated. This was right before the collision.

Mr. Dawson: If the Court pleases, Mr. Clark and I represent two of the respondents, the steamer "Gulftrade" and the Gulf Refining Company. Those two respondents have been sued with Mr. Long's clients, who are, as has stated, the tugs "Triton" and the "Churchman" and their owners.

I understand from Mr. Long's statement to the Court that he concedes that the navigation of the "Gulftrade," with the assisting tugs made fast, as he has described, was in charge of the masters of the two tugs he represents, and that would seem to confirm the view that Mr. Clark and I have had from the beginning, that we are only nominal defendants, at the most subordinate defendants, if such a term can be used, and I would like to call upon Mr. Long to state on the record, before we proceed with any further testimony, what his position is with respect to the responsibility for the navigation of the "Gulftrade" in the circumstances.

Mr. Long: If your Honor pleases, you are familiar with this situation. You had it in the Kellog case, and you had it in the Paulsboro case. Our captain went on the bridge of this steamer, and gave the orders, we using the steamer's propelling power, and under your Honor's opinion, I think it is only fair to admit that if there is any fault to be found on the part of the steamer, it is going to fall on our shoulders in the end. I say to you, frankly, that I cannot see that the steamer was guilty of any fault, and I shall certainly argue to you, very strenuously, that the two tugs were not at fault, because they were not doing anything. If the "Gulftrade" is found at fault by your Honor, the employer or the captain of the "Triton" will have to stand it.

Mr. Dawson: That being so, our interest is not very great in the case, but we have taken a considerable amount of testimony, and we maintain that there was no negligence on the part of the "Gulftrade," and we say none on the part of the tugs and their masters, who had her in charge.

The opening statements of Mr. Brown and Mr. Long have clearly shown the very narrow issue here.

The contention of the libellant, represented by Mr. Brown, is when the vessels were in positions to have negotiated the passage without any danger, and with ample clearance, and after three separate sets of whistle signals, to indicate the maneuver, which had been fully understood and agreed upon, the collision was brought about by the "Gulftrade" sheering to her port, whereas Mr. Long contends, and Mr. Clark and I maintain that in the selfsame premised situation, the collision was brought about by the tug "Taurus" porting her helm and sheering to her starboard across our course. It is a very narrow issue.

Mr. Brown: I think I might add, may it please the Court, that while as between the respondents, if there is liability that falls on the tugs, or the owners of the tugs, as far as we are concerned against the "Gulftrade" in rem, we can recover against her if we show she was negligent. Your Honor met that situation in the Paulsboro case in a very practical, and it seems to me a conclusive manner. Your Honor held that the decree should run primarily against the owners of the tugs, and if it was not satisfied by that, then, secondarily, against the owner of the "Reese," which was actually in collision. That would be an academic situation for us in this case, because of the captain of our tug is perfectly good, assuming there is any decree for the libellant.

May it please the Court, first, I want to read into the record certain formal admissions, to which we have stipulated.

Article I of the libel is admitted. It is as follows:

"The libellant is a corporation organized and existing under and by virtue of the laws of the State of Delaware, having its principal office and place of business in Philadelphia, Pennsylvania, and at all the times hereinafter mentioned, was and now is the owner of certain barges known as Nos. 18 and 33, and the cargoes loaded thereon, and was at all the times hereinafter mentioned, charterer and lawful bailee of a barge known as No. 44 and owner of the cargo loaded thereon, and is duly authorized to file this libel and to prosecute this action as charterer and bailee of said barge No. 44 and on behalf of said barge No. 44 and its owner."

Article second of the libel is admitted, which is a description of barge No. 18, except insofar as that article alleges that the barge was tight, staunch, and seaworthy, and properly manned, equipped and supplied.

(Article 2 of the libel reads as follows):

"Second: The barge No. 18 is a wooden barge about 100 ft. in length and 26 ft. in breadth and 8½ feet in depth and at the time of the collisions hereinafter mentioned, the said barge was tight, strong, staunch and seaworthy, and properly manned, equipped and supplied, and had on board a cargo of about 471 tons of pebbles, which was properly stowed thereon."

The article three is admitted, as to the description of barge No. 33, and as to the fact that she had a cargo, but the amount of the cargo we will leave until the proof of damage.

(Article 3 of the libel reads as follows):

"Third: The barge No. 33 is a wooden barge about 120 ft. in length, 28 ft. in breadth, 8.9 ft. in depth, and at the time of the collisions hereinfater mentioned, said barge was tight, strong, staunch and seaworthy, properly manned, equipped and sup-

plied, and had on board a cargo of about 643 tons of concrete sand, which was properly stowed thereon."

The fourth article of the libel is admitted, insofar as it is the barge No. 44, and that she had on board a cargo, and that she was owned by W. S. Porch, and was chartered to the libellant by the owner, and the libellant was the lawful bailee in possession thereof.

(Article 4 of the libel reads as follows):

"Fourth: Barge No. 44 is a wooden barge about 120 ft. in length, 28 ft. in breadth, 8.9 ft. in depth and at the times of the collisions hereinafter mentioned, was tight, strong, staunch and seaworthy, properly manned, equipped and supplied, and had on board a cargo of about 568 tons of pebbles, which was properly stowed thereon. The said barge, at the times hereinafter mentioned, was owned by W. S. Porch and was duly chartered to the libellant by the said owner and the libellant was the lawful bailee in possession thereof."

Article 5 is admitted. It is a description of the "Gulftrade."

(Article 5 of the libel reads as follows):

"Fifth: At all the times hereinafter mentioned, the steamship 'Gulftrade' was and is a large tank steamer of 6,859 gross tons, being 429.3 feet in length, 59.2 feet in breadth and 41.4 feet in depth, and hailing from the Port of Port Arthur, Texas."

Article 6 is admitted as to the ownership of the "Gulftrade" and the incorporation of the Gulf Refining Company.

(Article 6 of the libel reads as follows):

"Sixth: The respondent, Gulf Refining Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Texas, has an

office and place of business in Philadelphia, Pennsylvania, within the jurisdiction of this Honorable Court, and, at all the times heretofore referred to was and now is the owners of the steamship 'Gulftrade.' "

Article seven is admitted. It is a description of the tug "Triton."

(Article 7 of the libel reads as follows):

"Seventh: At all the times hereinafter mentioned, the steam-tug 'Triton' was and is an iron steam-tug of 84.8 feet in length, 19 feet in breadth and 9 feet in depth, and a burden of 98 gross tons, and hailing from the Port of Philadelphia."

Article 8 is admitted. That is a statement of the ownership of the "Triton" and incorporation of the Independent Pier Company.

(Article 8 of the libel reads as follows):

"Eighth: The respondents, Independent Pier Company, is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania and has an office and place of business in the City of Philadelphia, State of Pennsylvania, within the jurisdiction of this Honorable Court, and was, at the times hereinafter referred to, and now is the owner of the steam-tug 'Triton.' "

Article nine is admitted, a description of the tug "Churchman."

(Article 9 of the libel read as follows):

"Ninth: At all the times hereinafter mentioned, the steam-tug 'F. A. Churchman' was and is a steel steam-tug of 75.8 feet in length, 17.6 feet in breadth and 7.8 feet in depth, and of a burden of 74.98 gross tons, and hailing from the Port of Philadelphia."

Article 10 is admitted as to the citizenship and residence of the owner of the "Churchman" and the jurisdiction of this court over it.

(Article 10 of the libel reads as follows):

"Tenth: The respondent, Alfred C. Churchman, is a citizen and resident of the City of Philadelphia, State of Pennsylvania, and was, at the times hereinafter referred to, and now is the owner of the steam-tug 'F. A. Churchman.'"

Mr. Brown: I would like to offer those articles in evidence.

Mr. Long: It is distinctly understood, however, that we deny that any of these lighters were tight, staunch, strong, or seaworthy, or that they were properly manned and equipped.

Mr. Brown: I also want to offer in evidence the depositions of the pilot of the "Taurus," Geddes, and the master Marvil, and in conjunction with the depositions of Geddes, a diagram drawn by him at the time of his deposition, and already marked for identification.

I also want to introduce in evidence the deposition of Sheard, the master of the lighter No. 53.

I also introduce in evidence the testimony of Worrell, the engineer of the "Taurus," and Barbieri, the master of the barge 33.

I also want to offer in evidence the deposition of Reddish, the deck-hand on the "Taurus," and Donnelly, the assistant engineer.

Mr. Long: I took certain objections on the record, if your Honor pleases. I want it understood that those objections are insisted upon.

Mr. Dawson: In order to have our position on the record, I renew our objections, as stated in the depositions that Mr. Brown has just offered.

(Depositions in question attached hereto and made a part hereof.)

EVIDENCE ON BEHALF OF THE LIBELLANT.

CLARENCE J. TURNER, having been duly sworn, was examined and testified as follows:

By Mr. Brown:

Q. Where do you live?
A. Philadelphia, 5324 Upland Street.
Q. By whom are you employed?
A. Charles Warner Company.
Q. How long have you been employed by the Charles Warner Company?
A. Six years.
Q. What is your position there?
A. I am marine superintendent at the present time.
Q. Have you ever followed the water?
A. Yes.
Q. In what capacities?
A. Sailor, pilot and master.
Q. What license?
A. Both steam and sailers; master of inland waters, first-class pilot Delaware River and Bay.
Q. How long have you held those papers?
A. Since 1915.
Q. What vessels have you shipped on as master or pilot, and when, and for how long?
A. I couldn't give you the exact dates.
Q. Oh, approximately?
A. Approximately, I was in the tug "Schermerhorn" for eight months, American Bridge Company.

Q. In what capacity?

A. Master and pilot. I served in both capacities, and in the tug "Bradley," and then as pilot, as pilot on the Wilson Line steamers, going from one to another for three years. I was master of the tug "Hartford" three years.

Q. The tug "Hartford" is owned by the Warner Company?

A. By the Warner Company.

Q. Any other experience as master and pilot?

A. None to speak of, only for a period of two and three months at a time. The Philadelphia and Reading "Frederick Janssen."

Q. How long had you been following the water prior to getting your papers?

A. Since I was 14 years old, and I am now 37.

Q. How old are you?

A. 37.

Q. While acting as master and pilot of these various tugs that you mentioned, have you ever towed in and out of the Schuylkill River?

A. Yes.

Q. What kind of vessels have you towed in and out of there?

A. All the sand scows and mud scows, that is all I handled.

Q. Have you been in and out of there in a light tug boat?

A. Yes.

Q. Been in and out of the river many times?

A. Yes; many times.

Q. At various stages of the tide?

A. Various stages of the tide.

Q. I hand you a chart, number 381—another one of which the Court has, and I ask you to describe, from your knowledge of the situation, whether force

and direction of the current at the mouth of the Schuylkill River, beginning at a point shortly below the buoys, and up beyond them, and when the tide is flowing, the direction of the tide, and where it goes, whether it goes towards the east or west bank, and the general direction of the water.

Mr. Long: I would like to object to that question, if your Honor pleases. It seems to me that it is clearly apparent that the answer to that question would have to depend on the situation of the wind and the force—the velocity of the wind, the general weather conditions prevailing.

Mr. Brown: Inasmuch as it was the unanimous testimony that there was no wind to speak of at the time of the collision, I will follow that question with this amendment:

By Mr. Brown:

Q. That you consider, in answering the question, that there was no wind which could be taken into consideration, because that is the testimony in this case?

Mr. Long: Then there is another thing to be considered: You people, who live in Philadelphia, know that frequently in the spring of the year we have freshets in the Schuylkill River, and that undoubtedly will affect the situation, too.

The Court: Do you want a ruling?

Mr. Long: Yes, sir.

The Court: I will permit the general situation of

the channel of the Schuylkill River at that point to be shown as bearing upon the conditions existing at this time. I think it has a bearing.

By Mr. Brown:

Q. Go ahead and answer the question?

A. The flood tide, coming up the Delaware, from this point here (indicating) ——

Q. What point is that?

A. The lower point of the Schuylkill bank, which you can see, makes a shoal out here. (Indicating.)

By the Court:

Q. Fix that with reference to the red or black buoys?

A. The three-foot mark, below the black buoy. At that point the tide will start and make what you call an eddy or a whirling tide, and will continue to make a slack tide all up the western side of the channel, that stronger flood tide running to the eastern side.

By the Court:

Q. As I get it, I have a very natural inference the swirl would be on the outside of the curve here (indicating), and the slack water, or eddy, or whirl, which ever you choose to call it, would be on the inside?

A. It would be below this point. (Indicating.)

By Mr. Brown:

Q. What point is that?

A. From the three-foot buoy.

Q. Will you mark that point, that you are referring to, with a cross or any other mark?

A. It's marked right below 2.

By the Court:

Q. It is right to the westward of the black buoy?

A. Right to the westward of the black buoy, as you can see. When this tide goes up, it has a break, and instead of going up this side (indicating), it goes over to the eastward, and then up, causing a slack tide all along the western side of the channel.

Q. How far up does this slack tide extend under normal conditions?

A. I should say at least two-thirds of the way up, on that one course.

Q. Two-thirds of the way up to that angle? (Indicating.)

A. Yes, sir.

Q. Indicate the angle by a mark there?

(Witness complies.)

The Court: I want you to tell me as you go along. I understand it to refer to the angle, just short of which you state the collision occurred?

Mr. Brown: Yes; on the western side.

By Mr. Brown:

Q. There is slack water then to the western shore?

A. Yes.

Q. If it is possible to say approximately—and do not say if it is not—how far out toward mid-channel would you say that the influence of that slack water held?

A. Well, I should say half-way, or at least one-third of the way; to be more sure about that, from the line, the angle line here (indicating) the mid-channel.

Q. At least one-third, and it is possibly one-half from the angle to mid-channel?

A. Yes. In other words, the tide hasn't the strength one-half over to the channel that it has in the channel or on the eastern side of the channel.

Q. The force of the tide sweeps up to the eastern shore?

A. Yes.

Q. And by the black buoys?

A. There isn't much more than half the black buoy, not at the flood tide, because there seems to be that eddy, the tide doesn't seem to get a full sweep.

Q. You have handled tows of sand lighters in and out of the Schuylkill River, have you not?

A. Yes, sir.

Q. What is the effect upon a tow of four sand lighters, loaded, supposing these sand lighters are of the character that you heard described in the statements, when a tug is bringing them into the Schuylkill River on a flood tide, under a starboard helm, of throwing the helm to port for a short period of time, estimated to be a half minute or less; how would that throw the barges?

A. Are you entering the Schuylkill River, or on your course up the Schuylkill, or are you coming down to make the turn?

Q. No, you are entering the Schuylkill, and going up the river.

A. Then, you aren't on your course at all?

Q. You are just entering and rounding the buoy, and rounding in under a starboard helm?

The Court: As I understand the witness, what he wants to know is whether you are speaking of the fact—you are entering the Schuylkill, or after you enter it, after you have straightened out on your course.

Mr. Brown: As you have rounded in, entering, a starboard helm, passing the first of the buoys, with your tow, and the wheel ——

A. The tug under the starboard helm?

Q. Yes, rounded to?

A. Entering under her port helm?

Q. Coming into the Schuylkill River past the buoy?

A. You mean a port helm?

Q. A port helm.

A. That's right. You are coming in under a port helm?

Q. No, you are coming under a starboard helm?

A. You are speaking of the rudder?

Q. Yes.

A. The reason I mentioned that I always thought that a starboard helm gave you a port rudder and a port helm gave you a starboard rudder.

Q. So that you will understand it, when I say under a starboard helm, which way do you think the bow of the tug will go?

The Court: He has expressed it as what you call a starboard helm, he calls a port rudder.

The Witness: Yes, that's right. What he calls a starboard helm is a port rudder to me.

By Mr. Brown:

Q. So that we may understand each other, now we are rounding into the Schuylkill River, and have just passed the black buoy, and the tug for a moment or so—indefinite as to how long—is put under a port helm or a starboard rudder, which way does that tend to take the barges?

A. That will throw the bow of your barges for a short period of time to port. It will tighten the starboard hawser of the boat, she towing with two lines, I suppose, and it would tighten on the starboard hawser.

Q. Then, that maneuver will tend to throw the barges to port?

A. Yes.

Q. Have you ever had charge of a steamer going into the Schuylkill River?

A. No.

Q. You have not?

A. No.

Cross-examination.

By Mr. Long:

Q. These tugs that you have made mention of, the "Schermerhorn" is the American Dredging Company, and so is the "Bradley?"

A. Yes.

Q. They are small tugs used for towing mud, are they not?

A. Yes.

Q. And this Wilson Line, you say you were with them?

A. But that isn't a towing concern.

Q. No, that is the passenger steamers from Wilmington?

A. Yes.

Q. What boat were you on?

A. "City of Wilmington," "City of Camden" and the "City of Chester;" all three of those.

Q. About when, for how long?

A. Well, I was in the "Wilmington" for two years, and the other year I will say was divided between the "Camden" and the "City of Chester."

Q. Of course, you were not navigating into the Schuylkill River with those boats?

A. No.

Q. You stated, in answer to Mr. Brown's question, as to getting on the course. As a matter of fact, you get on the course, to enter the Schuylkill, some little time before you get up to either the red or black buoy?

A. No, sir.

Q. Do you not pick up the ranges of those buoys outside?

A. Yes, but you are fairly close to the red buoy, at least, almost all in that way. I never took the trouble in the main channel of the Delaware of getting the Schuylkill ranges, and I don't think anybody else practices that. I never seen it practiced.

Q. If you will look at that chart, you will see you have a got a distance of about 1200 feet from the edge of the Delaware channel up to those buoys, where those ranges run?

A. Sure.

Q. Yes.

A. Sure. If you are going down the Delaware until you—take it proceeding down the Delaware until you get your Schuylkill ranges ——

Q. Suppose you are proceeding up?

A. Then, suppose you are proceeding up, it comes in line, because you can easily get your ranges on.

Q. But what I am telling it isn't practiced going down the river, especially with flood tide, for a boat to proceed down the Delaware, and get the ranges on.

Q. How about coming up? It shows there on the chart that you can get those ranges about 1200 feet from the buoys?

The Court: You mean by that, Mr. Long, that the distance here from the black buoy to the dotted line, which indicates the western side of the Delaware channel is approximately 1200 feet?

Mr. Long: Yes, sir; from the buoys.

By Mr. Long:

Q. You think, in entering there, you enter nearer the red buoy than you do to the black?

A. Yes.

Q. After you get up on even terms with the buoy at flood tide, you have the tide then right at the stern of you, do you not?

A. When you get up even with the buoys?

Q. Yes, coming in?

A. No, there's a tide. I thought I covered that a while ago. There's a tide, part of this tide going up the Delaware, and part of going up the Schuylkill, and you wouldn't have the tide directly in back of you until after you got clear of the buoys, or at least above them.

Q. You say after you cleared the buoys?

A. After you cleared the buoys.

Q. Yes, and then you would have the tide right on your stern?

A. Yes, after you got inside of the black buoy.

By the Court:

Q. Let me follow you as you go along. As I understand the situation, you do not get the tide of the Schuylkill behind you until you have got out of the influence of the Delaware?

A. Yes, sir.

By Mr. Dawson:

Q. You do not get the tide setting true up the channel until you get to those buoys?

(No answer.)

By the Court:

Q. That point would be where you lose the influence of the Delaware tide, which was carrying you to the eastward? You do not get away from that influence until about the time you clear the buoys?

A. Yes, sir; you clear the buoys before you could clear the influence of the Delaware tide.

By Mr. Long:

Q. As a matter of fact, that flood tide does not bother you when getting into the Schuylkill if your tug has plenty of power to pull her tow? It does not handicap you, does it?

A. Oh, yes; you have to be very careful going down with a loaded tow.

Q. Going in?

A. I am telling you the way that we usually go in there. You have to be very careful, and get far enough down onto the black buoy, or down that way before you haul in, because of the effect of the flood tide on your barges.

Q. In other words, it would sweep your loaded barges across the channel and block the channel?

A. Yes.

Q. But after you get by the buoys, you are right?

A. Yes, if you are sort of to the westward.

Q. Of course, you would not undertake to tell this Court, how to bring a steamer like the "Gulftrade," about 445 long and 59 feet beam and drawing 27 feet into that channel, would you?

A. No.

Re-direct examination.

By Mr. Brown:

Q. When the tide up the Schuylkill, after passing the red buoy, runs up the river, does it run up with more force on the eastern or the western shore? I thought we understood that the slack water remained more or less slack on the western shore, and the force of the tide, running up the Schuylkill, runs up to the eastward, that right?

A. That's right.

Re-cross examination.

By Mr. Long:

Q. All the way up?

A. No, I merely mean to this point on the chart. (Indicating.)

Q. After you come in there, passing the black buoy, how close could you take the "Taurus" and the tow of sand scows, which she had in tow on this day, the 33, 18, 53 and 44, assuming that they have about three inches of free board amidship; how close can you get to the port bank going up, with safety?

A. You can get fairly close in along the lower—the outer edge of this jetty that is built there, but as you get up a little further, you have to cut over toward the channel.

Q. When you say "fairly close," do you mean 15 or 20 feet?

A. 25 or 30 feet.

Q. You can do that until you come to a cable wire, telegraph wire that runs along there, can't you?

A. No.

Q. Can you mark that telephone wire on that chart?

A. No, I can't do that, but I marked a point as to where the effect of the slack tide. (Indicating.)

Q. Yes.

A. After you get near to that point, you have to begin to bear off the channel, to be sure you are right.

Q. That cable runs somewheres up there?

A. I don't know just where it does.

Q. It is a considerable distance above this point? (Indicating.)

A. Yes, it's a considerable distance above that point.

Q. You say you can go in there 25 to 30 feet, in here? (Indicating.)

A. To the black buoy (indicating), and then you have to bear off.

Q .What distance would you say you could do that from the black buoy, up how far?

A. I don't know. That's pretty hard to get.

Mr. Brown: That is about 700 feet to that angle.

By Mr. Long:

Q. You say you can get in for 25 or 30 feet for a distance of 700 feet above the black buoy?

A. It is how far from the black buoy to this angle, about 750 feet?

Q. Yes.

A. That being 750 feet, I should say 400 feet was as far as you could up there.

Q. When you get beyond that 400 feet, how close to the port bank going up, can you run with a tug, like the "Taurus," and her tow?

A. I don't know. I would have to take soundings on that, because, naturally, everybody hunts for the very deepest water when you get up to that point. I always did that when I had a tow.

Q. You mean with a tow, drawing ten feet of water, you would hunt for the deep water of 27 feet in the channel?

A. Yes, if there was nothing in my way.

Q. Assuming there is something in your way, that there is a steamer drawing 27 feet of water, with two tugs on her port side, and having answered a one-signal blast, you would still hunt for the deep water, and run over to your starboard?

A. I would try to have my towing position, and hold it there. If the steamer wanted to pass, that would be his risk, not mine.

Q. Have you ever sounded there?

A. No.

Q. Know anything about the soundings there?

A. No.

Mr. Brown: I will offer in evidence this chart, which is corrected, I think, to May 26th, 1923, which is about the nearest correction to the date of this collision.

(Chart in question marked Libellant's Exhibit 1, October 8th, 1926, H. J. M.)

Mr. Long: Your Honor, I think it is more accurate to have the chart of 1923, because they have been dredging in there for the last three years.

(A recess was here taken until 2 o'clock P. M.)

(Depositions on behalf of the tug "Triton," Independent Pier Company, Tug "F. A. Churchman," and Alfred C. Churchman, taken on Wednesday, September 29, 1926, at the office of Howard M. Long, Esq., Packard Building, at two o'clock P. M. by agreement.)

(It is agreed by and between proctors that the depositions may be taken stenographically, reduced to typewriting and copies furnished opposing counsel; that the signatures of the witnesses be waived, and that formal signing, sealing, certification

and filing be waived; and that the costs of taking and transcribing the depositions may be a taxable disbursement in the cases.)

PRESENT:

MESSRS. ACKER, MANNING AND BROWN, by MR. BROWN for Charles Warner Company.

H. ALAN DAWSON, ESQ., of BIDDLE, PAUL, DAWSON and YOCUM for the S. S. "Gulftrade" and Gulf Refining Co., Inc.

HOWARD M. LONG, ESQ., for steam tug "Triton," Independent Pier Company, steam tug "F. A. Churchman," and Alfred C. Churchman.

AUGUSTUS HINDON, having been duly sworn according to law was examined and testified as follows:

By Mr. Long:

Q. Where do you live?
A. 5837 Windsor Avenue, Philadelphia, Pa.
Q. How old are you?
A. Forty-nine.
Q. Your business is following the water?
A. Yes, sir.
Q. How long have you been following the water?
A. About thirty years.
Q. Do you hold a license as chief engineer?
A. Yes, sir; I do.
Q. On October 1, 1923, the day of the collision between the S. S. "Gulftrade" and Charles Warner Company's Lighter No. 18, were you the chief engineer of the steam tug "Triton?"

A. I was.

Q. Were you on watch at the time of the collision?

A. No, sir; I was not.

Q. What time did you go off watch that day?

A. 12 noon.

Q. What did you do after you went off watch at noon on that day?

A. I turned in.

Q. Went to your room?

A. Yes, sir; and turned in.

Q. Where was your room?

A. It is aft.

Q. On which side?

A. Starboard side.

Q. Were you asleep at the time of the collision?

A. Yes, sir; I was.

Q. Do you know anything about the facts of the collision?

A. No, sir; nothing at all.

Q. Are you still on the "Triton?"

A. Yes, sir.

E. W. HELM, having been duly sworn according to law was examined and testified as follows:

By Mr. Long:

Q. How old are you and where do you live?

A. I live at 514 S. 54th Street, Philadelphia, and am sixty-seven years old.

Q. You follow the water?

A. Yes, sir; I have been following the water for the past fifteen years.

Q. On October 1, the day of the collision between the S. S. "Gulftrade" and the Lighter 18 of the

Charles Warner Company, were you on the "Triton?"

A. Yes, sir.

Q. That was 1923?

A. Yes, sir.

Q. What did you do on that tug?

A. I was steward.

Q. Do you remember the collision?

A. After it was over, I was down below at the time that it happened.

Q. When did you know about it?

A. I was called out just after the collision happened; but it was all over then.

Q. Your room was down forward?

A. Yes, sir.

Q. Do you know anything about the facts of the collision except what you have been told?

A. No, sir; nothing at all.

Q. Did you hear any whistles?

A. No, sir.

Q. After the collision occurred were you called out?

A. Yes, sir; I was.

Q. You are still on the "Triton?"

A. No, sir; not at the present time.

Q. What are you doing now?

A. Working ashore.

Cross-examination.

By Mr. Brown:

XQ. Were you awakened after the collision?

A. Yes, sir; about the time that it was all over one of the deck hands called me.

XQ. What did you do when you were called?

A. I got up and went out on deck.

XQ. Were you asleep?
A. I took a nap.
XQ. Where was your vessel at the time?
A. We were in the Schuylkill.
XQ. What was her position at that time, when you got up, with respect to the "Gulftrade?"
A. I don't know.
XQ. Were you on the starboard or port side of the "Gulftrade" at that time?
A. On the starboard side I think.
XQ. Did you see the other tow at that time?
A. No, sir.
XQ. Did you see the tow which the tug "Taurus" had at the time you came out?
A. No, sir.
XQ. Did you notice where the "Gulftrade" was with respect to your vessel then?
A. No, sir; I did not.

Re-direct examination.

By Mr. Long:

RDQ. Were you still made fast to the "Gulftrade" when you came out?
A. Yes, sir.

By Mr. Brown:

RDQ. On the starboard side?
A. Yes, sir.

By Mr. Long:

RDQ. Are you sure whether you were on the starboard or port side, or don't you remember?

Mr. Brown: Objected to; the witness has already answered that question.

ESMAR HUDSON, having been duly sworn according to law was examined and testified as follows:

By Mr. Long:

Q. How old are you?
A. Twenty-five.
Q. Where do you live?
A. At the present time I am making my home on the tugboat "Cora."
Q. You follow the water?
A. Yes, sir.
Q. How long have you been following the water?
A. About nine years.
Q. On October 1st, 1923, the date of the collision between the S. S. "Gulftrade" and the Charles Warner Company's Scow No. 18, were you on the tug "Triton?"
A. Yes, sir.
Q. What was your position there?
A. Fireman.
Q. Had you been on her for some time?
A. I cannot tell you exactly how long it was but I think somewhere around three years.
Q. Do you hold any license?
A. Yes, sir.
Q. What license?
A. Chief engineer, rivers, lakes, bays and sounds up to 125 tons.
Q. Did you hold that license on October 1st, 1923?
A. Yes, sir; I did.
Q. But you were serving on the "Triton" at that time in what capacity, engineer or fireman?
A. As fireman at that time.
Q. What time did you go off watch that day?

A. Twelve o'clock.

Q. Noon or midnight?

A. At noon.

Q. What did you do then?

A. I turned in.

Q. Did you get your dinner before you turned in?

A. Yes, sir; I did.

Q. Then you turned in?

A. Yes, sir; in the forecastle.

Q. Did you go to sleep or did you lie there awake?

A. I went to sleep.

Q. Did you hear any whistles before this collision?

A. No, sir; I did not hear any whistles particularly that I remember about.

Q. Do you know anything about the facts of the collision before it happened?

A. No, sir; I do not know anything about it at all; not until after it was over.

Q. After the collision was over were you called out, or were you out before it happened?

A. I was called out after it was happened.

Q. And you came out then?

A. Yes, sir; after it was all over I came out on deck, I had been called out.

Q. Do you remember who called you?

A. It was the other fireman, Godfrey.

Q. Did you come right out on deck as soon as you were called out that day?

A. Yes, sir; just as soon as I could get out.

Q. Where was the tug "Triton" at that time?

A. On the port quarter.

Q. Of what?

A. Of the steamer "Gulftrade."

Q. Did you see the "Churchman" then?

A. Yes, sir.

Q. Where was she then?
A. On the port side at the bow.
Q. Of the "Gulftrade?"
A. Yes, sir.
Q. Did you see the tug "Taurus" and the scows that she had in her tow?
A. I saw two or three sand scows at the time that I came out there on deck.
Q. Did you see the tug "Taurus" after that?
A. Yes, sir.
Q. Where was she?
A. It looked to me as though she went around on the starboard side and went around the ship's stern.
Q. Did you see the lighter 18?
A. Yes, sir; after I got out.
Q. Where was she, on the starboard or on the port side?
A. Starboard side.
Q. Did you see anybody make any effort to save this man on the Warner scow 18?
A. I saw a man jump overboard after the accident from the ship.
Q. Did he have a life line with him?
A. He had a life ring.
Q. Did you see the tug "Churchman" do anything?
A. She went around and picked up a man who was off the ship in the water.
Q. Was that the man who had the life ring?
A. Yes, sir.
Q. Is that all that you know about the collision?
A. Yes, sir.
Q. Are you on the "Triton" now?
A. No, sir; I am on the "Cora," Paddy Martin's tug.
Q. What position?
A. Fireman.

Cross-examination.

By Mr. Brown:

XQ. When you got out on deck the collision was all over, as I understand from your testimony?

A. That is right.

XQ. And at the time that you got out there your tug was on the port quarter of the "Gulftrade?"

A. Yes, sir.

XQ. When was it that you saw the lighter 18 belonging to the Warner Company?

A. That was after she had turned over; the ship had passed her then.

XQ. Was that immediately after you came out on deck?

A. It was shortly after I got out there on deck; it was not so long.

XQ. But you remember that the lighter 18, was astern of the "Gulftrade" at that time?

A. Yes, sir.

XQ. And your tug was still on the port quarter of the "Gulftrade" wasn't she?

A. Yes, sir.

XQ. And at that time the "Churchman" was on the port bow of the "Gulftrade?"

A. She was hurrying up in the vicinity of this sunken scow. She was swinging back on the "Triton" when I saw her.

XQ. How far ahead of you was she then?

A. That I can't tell you.

XQ. Were any of the lighters on the shore at that time?

A. I do not know anything about that; not that I know of; I did not know about it.

XQ. You did not see them up on the bank?

A. No, sir.

XQ. Was your tug fairly close to the shore at that time?

A. Well, I could not tell you anything about that, I don't know about that.

XQ. Then you do not know how far it was to the shore?

A. No, sir; I could not tell you about that because I do not know about the channel there.

XQ. Did you notice the shore off to your port side?

A. I didn't notice it.

XQ. Were these sand scows ahead of your tug or on the port side or how?

A. We were coming down on the port side of the "Gulftrade."

XQ. You didn't notice how close you were to the bank?

A. No, sir.

XQ. Or how close they were to the bank?

A. No, sir.

XQ. What did you do just as soon as you got out there on deck after the collision?

A. I just stood there and looked around.

XQ. Where did you stand?

A. Up on the bow of the tug "Triton."

XQ. On which side, or right in the bow?

A. Right in the bow.

XQ. Was the stern of the "Triton" aft of the stern of the "Gulftrade" at that time?

A. I should say that it was just about even then with the stern of the ship.

Cross-examination.

By Mr. Dawson:

XQ. You spoke in your direct examination about a man leaping off the ship to save a man who was overboard?

A. Yes, sir; he was from the ship.

XQ. The man whom you saw jump overboard to save a man in the water was a member of the crew of the "Gulftrade?"

A. Yes, sir.

XQ. You saw him swimming around in the water with a life belt?

A. Yes, sir.

J. G. WILKINS, having been duly sworn according to law was examined as follows:

By Mr. Long:

Q. How old are you?

A. Thirty-one.

Q. Where do you live?

A. Lewes, Delaware.

Q. Do you hold any license from the United States inspectors or not?

A. I do, yes, sir.

Q. What is it?

A. Chief 100 tons ocean, assistant 200 tons, ocean and rivers, lakes and bays.

Q. Did you hold that license on October 1st, 1923?

A. Yes, sir; I did.

Q. You are an engineer?

A. Yes, sir.

Q. Were you on the tug "Triton" on October 1st, 1923, at that collision between the "Gulftrade" and the Charles Warner Company's lighter 18?

A. Yes, sir.

Q. In what capacity?

A. First assistant engineer.

Q. Had you been on the "Triton" for some time?

A. Yes, sir; I had.

Q. Are you on her now?

A. Yes, sir; I am.

Q. Did you see this collision?

A. No, sir.

Q. Do you know anything about how it occurred?

A. No, sir; I do not.

Q. Why not?

A. Because I was in the engine room of the tug at the time it happened.

Q. And had you been there before it happened?

A. Yes, sir; I was there right along.

Q. Were you on watch in the engine room at the time that the collision happened and before that?

A. Yes, sir.

Q. What time did you go on watch that day?

A. Twelve o'clock noon.

Q. Whom did you relieve?

A. The chief, Augustus Hudson.

Q. And you stayed in the engine room from the time that you relieved him down to the time of the collision?

A. Yes, sir.

Q. Continuously?

A. Yes, sir.

Q. What were you doing there?

A. Waiting to get signals, whatever they might want and obey them.

Q. Do you remember any signal just before the collision happened that day?

A. Yes, sir; "Come ahead."

Q. Did you obey that?

A. Yes, sir; I did.

Q. As soon as it was given?

A. Just as soon as I got it.

Q. How soon was it before the collision that you got that order down in the engine room?

A. Well, I could not tell you that because I don't know just when the collision happened.

Q. Didn't you feel the blow of the collision?

A. No, sir; I did not.

Q. Where was the "Triton" made fast to the "Gulftrade" as you were going along there?

A. On the port quarter aft.

Q. Did you hear any whistles from the "Gulftrade?"

A. Yes, sir.

Q. What were they?

A. One blast.

Q. How many did you hear?

A. I don't remember whether it was two or three times because I was not paying so much attention to whistles.

Q. That is not in your bailiwick?

A. No, sir.

Q. When you say that you heard one blast of the whistle, do you mean one separate blast?

A. Yes, sir.

Q. And you heard two or three different times, you don't remember which, a signal of one blast blown?

A. Yes, sir.

Q. Which vessel in your fleet blew that?

A. The "Gulftrade."

Q. Do you remember what interval there was between those separate signals of one blast?

A. I didn't pay enough attention to that to be able to remember that.

Q. That was not your business?

A. No, sir.

Q. And you did not take the time to determine that?

A. No, sir; none whatever.

Q. Your business was there to operate the engines?

A. Yes, sir.

Cross-examination.

By Mr. Brown:

XQ. You don't know when the collision occurred?

A. No, sir.

XQ. And you didn't feel any blow of the collision?

A. No, sir.

XQ. And you did not hear any noise that would lead you to believe that a collision had occurred?

A. No, sir.

XQ. This signal that you mention, "Come ahead" how do you know that was before or after the collision?

A. I don't know that.

XQ. Did you come on deck at all?

A. No, sir; I stayed right there in the engine room.

XQ. How had your tug been proceeding before you received the signal ahead?

A. She was lying still.

Re-direct examination.

By Mr. Long:

RDQ. Did you notice when the "Gulftrade" and the "Triton" and the "Churchman" entered the Schuylkill between the red and black buoys?

A. No, sir.

RDQ. Where were you then?

A. I was in the engine room.

RDQ. And you paid no attention to where you were?

A. No, sir.

RDQ. You did not take any notice of anything along the land?

A. I did not.

RDQ. After you got this order of "Come ahead" did you obey the order?

A. Yes, sir; right away.

RDQ. You started the tug's engines in motion?

A. Right away.

RDQ. To what?

A. Full speed.

RDQ. Was that the order that was given to you?

A. Yes, sir; it was.

RDQ. How did you get it; on the telegraph?

A. No, sir; one bell and a jingle.

RDQ. When you got that order the tug's engines were stopped, I understood you to say?

A. Yes, sir.

Cross-examination.

By Mr. Dawson:

XQ. What were the next orders that you got after the one bell and jingle?
A. Stop.
XQ. About how long was it between those two signals; approximately I mean?
A. Five or six minutes.

By Mr. Long:

RDQ. Did you get that from your clock or is it only an estimate of your own?
A. It is simply an estimate.

Asher C. Hearn, having been duly sworn according to law was examined and testified as follows:

By Mr. Long:

Q. How old are you?
A. Thirty-three.
Q. Where do you live?
A. 618 S. 54th Street, Philadelphia.
Q. Do you hold any license from the United States local inspectors?
A. Yes, sir; I have a license as first-class pilot for the Delaware Bay and River; master's license up to 500 tons; and chief mate on the Atlantic coast between Cape Henry and Sandy Hook.
Q. How long have you held that license?

A. I have had my master's license since January 19, 1926; my first license was first-class pilot's license and I have held that since April 19, 1917.

Q. How long have you been following the water?

A. Fifteen years.

Q. Always on tugs.

A. All but one year when I was on a steamer.

Q. Are you on the "Triton" now?

A. Yes, sir.

Q. How long have you been on her?

A. Nine years.

Q. On October 1, 1923, the day of the collision between the "Gulftrade" and the Charles Warner Company's lighter No. 18, were you on the "Triton?"

A. Yes, sir: I was.

Q. In what capacity?

A. As mate.

Q. Where was your tug proceeding that day, what was she doing and where?

A. The best that I can remember of anything about the case was when we got orders to make fast alongside the "Gulftrade."

Q. Where was she then?

A. She was opposite Fort Mifflin coming up under her own steam.

Q. You came down and met her?

A. Yes, sir.

Q. Make fast to her?

A. Yes, sir; on the port quarter.

Q. Who was the master of the "Triton" at that time?

A. Harry Quillin.

Q. Was there any other tug down there that day?

A. Yes, sir; one other.

Q. That was what?

A. The "F. A. Churchman."
Q. Was she also made fast to the "Gulftrade?"
A. Yes, sir.
Q. Where?
A. On the ship's port bow.
Q. Who was the master of the "Churchman?"
A. Herman Marvel.
Q. After your tug the "Triton" came alongside the "Gulftrade" did your master remain on the tug or did he go on board of the steamer?
A. He went on board of the "Gulftrade."
Q. What part of the "Gulftrade" did he go on?
A. On her bridge.
Q. Where did the captain of the "Churchman" go, if you know?
A. That I can't say.
Q. After your tug had been made fast to the "Gulftrade" and your master had gone on the bridge of that steamer, what did you do?
A. I took charge of the "Triton."
Q. Where?
A. In the pilot house.
Q. Of the "Triton?"
A. Yes, sir.
Q. How was the weather that afternoon?
A. It was fair.
Q. Clear day?
A. There might have been a few clouds in the sky but it was what we call a clear day.
Q. How was the tide when you started up there?
A. Flood tide.
Q. Where were you and the tug "Churchman" assisting the "Gulftrade" to go that day?
A. At the pier of the Gulf Refining Company just below Penrose Ferry in the Schuylkill.
Q. Which side of the river is it?

A. North side.

Q. Sometimes called the east side?

A. The river down there runs more east than north.

Q. That would be the upper side?

A. Yes, sir.

Q. After your tug and the "Churchman" had been made fast alongside the "Gulftrade" the fleet proceeded on up the river, did it?

A. Yes, sir.

Q. Were your tug's engines in motion?

A. No, sir.

Q. What propelling power did the fleet have; what made it proceed up the river?

A. The ship was going under her own steam then.

Q. The "Gulftrade?"

A. Yes, sir.

Q. How was the tide?

A. Flood.

Q. While you were proceeding on up there did you see the tug "Taurus" and her tow?

A. Yes, sir; as we were under way I noticed that tow ahead of us. She was going up.

Q. About how far away were you from the "Taurus" when you first saw her?

A. When I first saw her we were about opposite Fort Mifflin docks.

Q. And where was the "Taurus?"

A. She was then about entering the mouth of the Schuylkill.

Q. Had she reached the black buoy?

A. Not when I first saw her.

Q. About how far away from your fleet would you say that the tug "Taurus" was then?

A. I should judge that she was about three-quarters of a mile from us then.

Q. Did you see the tug "Taurus" and her lighters when she got straightened out on the ranges to go into the Schuylkill River?

A. Yes, sir; I did.

Q. Did you hear any signals blown by the "Gulftrade?"

A. I did.

Q. What was the first signal that you heard the steamer blow?

A. A signal of one blast.

Q. Where was the "Taurus" and her barges then?

A. She was entering the mouth of the Schuylkill, straightening out then.

Q. And about how far away from your fleet would you say that she was at that time?

A. About half a mile, I judge.

Q. The "Gulftrade" blew that one blast for what purpose?

A. To pass on the starboard side of the "Taurus."

Q. Did you hear any answering signal from the "Taurus?"

A. Yes, sir; I did.

Q. What was it?

A. She answered the steamer's signal with one blast on her whistle.

Q. Did you see the "Taurus" make any change in her course or maneuver?

A. Yes, sir; she seemed to starboard her helm.

Q. Of course, as you were not on that tug you could not tell just what she did with her wheel?

A. No, sir.

Q. Then what do you mean when you say that she seemed to starboard her helm?

A. I mean that she seemed to come to the port a little.

Q. To her port?

A. That is it.

Q. That is what you judged she did?

A. Yes, sir; that is what I have to go by when I say that she starboarded her helm.

Q. Did you hear the "Gulftrade" blow any other signals after that first whistle you told us about?

A. Yes, sir; she blew another blast on her whistle.

Q. Just one blast?

A. Yes, sir; the same as before.

Q. Where was the "Gulftrade" then; had she entered the Schuylkill when she blew that second blast?

A. No, sir; she had not entered at that time.

Q. You mean the entrance to the Schuylkill?

A. No, sir.

Q. What marks the entrance to the Schuylkill?

A. The black buoy on the port side as you go in and the red buoy on the starboard side.

Q. When the "Gulftrade" blew that second signal did you hear any reply from the "Taurus?"

A. Yes, sir; right after that.

Q. What signal?

A. She blew a signal of one blast too.

Q. Did the "Taurus" make any apparent change of course then?

A. Not at that time; she seemed to be going in the same general direction.

Q. Do you know how far away from you she was when the "Taurus" blew that second signal?

A. I should say that it would be about three lengths of the "Gulftrade." That would be about twelve or fifteen hundred feet.

Q. Do you know how long the "Gulftrade" is?

A. Yes, sir.

Q. When that second signal was blown had the "Gulftrade" reached the black buoy?

A. No, sir.

Q. By the way, do you know how far apart those two buoys are?

A. The channel at that point, for deep draft vessels,I should think was two hundred and fifty feet.

Q. Is there any channel to the westward of that black buoy?

A. For a vessel of the draft of the "Taurus" I should say that there was.

Q. How far?

A. I should say to within forty feet of that jetty anyhow.

Q. There is a jetty on the port hand corner as you go in there is there?

A. Yes, sir.

Q. Do you know the tug "Taurus?"

A. Yes, sir.

Q. You have frequently seen her, I presume?

A. Yes, sir; many times.

Q. What was the "Gulftrade" drawing this day, if you remember?

A. About 27 feet.

Q. What width of channel did she have entering the Schuylkill on that draft?

A. She is 48 or 46 feet wide; I don't know as I could tell you that exactly.

Q. What channel width did you have for a vessel drawing that much?

A. For a deep draft vessel I should say that the channel was 250 feet wide.

Q. And you say that the "Gulftrade" was drawing about 27 feet on this occasion?

A. Yes, sir; about that.

Q. Do you call that a deep draft vessel for that channel?

A. Yes, sir; but there are deeper draft vessels that go up there than that.

Q. How much deeper draft vessels do you know of that go up that channel?

A. I have seen them go up there drawing 29.6.

Q. You have said that each vessel, the "Gulftrade" and the "Taurus" blew a signal of one blast on two different occasions?

A. Yes, sir.

Q. Now did you hear any signal after that second one-blast signal?

A. Yes, sir.

Q. What was that?

A. The "Gulftrade" blew a one-blast signal the third time.

Q. Just the same signal as she had blown on the first two occasions?

A. Yes, sir; just the same.

Q. Was that third one blast signal of the steamer answered by the tug "Taurus?"

A. Yes, sir; it was.

Q. What did she answer it with?

A. With one blast on her whistle.

Q. Did you see the tug "Taurus" after she answered the third time with that one blast?

A. I did, yes, sir.

Q. Did she still continue to hold her course there or what did she do?

A. She seemed to hold her course for a short time and then she seemed to go to starboard out of my sight, that is from where I was.

Q. Where were you on the "Triton?"

A. I was in the pilot house.

Q. And your tug was then made fast on what side of the "Gulftrade?"

A. Port quarter aft.

Q. Did you see her scows go with her?

A. Three of her scows came down on the port side; the same side the "Triton" was made fast on.

Q. What was done on your tug if anything, or what orders did you receive?

A. I got a signal from the captain of the "Triton" who was on the bridge of the "Gulftrade" to come ahead full speed and hard a port.

Q. Were those orders obeyed?

A. Yes, sir; they were.

Q. Just as soon as they were given?

A. Yes, sir; immediately.

Q. What did you do with reference to giving the order to your engine room?

A. I gave him one bell and a jingle.

Q. What does that mean?

A. Put the engines full speed ahead.

Q. When that order was given and before it was obeyed what were your engines doing?

A. They were stopped.

Q. Do you know what the purpose of that order was; why was it given?

Mr. Brown: Objected to.

A. The purpose was to sheer the ship to starboard.

Q. By ship you mean the "Gulftrade?"

A. Yes, sir.

Q. Was that order given before or after the collision?

A. Before the collision.

Q. And you say that it was obeyed immediately?

A. Yes, sir; it was.

Q. Was it immediately before or a few minutes before the collision, would you say?

A. Right away after the signal was given the collision happened; right away.

Q. Can you give us any idea how long it was before the collision when that order was given?

A. I should say that it was not over three minutes before the collision anyway.

Q. By the way, how was this steamer "Gulftrade" and the two tugs proceeding up the river; I mean at what speed were they going along there?

A. They usually go there slow; they never try to make any speed along there.

Q. You were going slow?

A. Oh, they never make much speed in going along there; usually very slow.

Mr. Brown: Objected to as not responsive to the question.

Q. What were they doing on this occasion; going up there pretty good speed or not?

A. No, sir; they were going along there very slow; not trying to make any speed at all.

Q. What would be your best estimate as to the speed that you were making along there?

A. Well, the usual speed in my experience has been about three miles an hour; that is what they usually do with a vessel like she was.

Q. Your best estimate of the speed that you were making on this occasion would be what?

A. Well, I should judge that she was going about the same.

Q. At what speed?

A. At three miles an hour; of course, it is hard to ascertain just how fast you are going.

Q. Is it your best estimate that you were making three miles an hour as you went along there?

A. Yes, sir; I should say that would be just about what we were doing; with a ship of her size we would not have gone any faster than that.

Q. Then you were making just about enough to give her steerage way; is that right?

A. Yes, sir; just about enough for steerage way and I don't think much more.

Q. What was between you and the "Taurus" when she made that change of course that you mentioned and got out of your sight?

A. Her tow and the "F. A. Churchman" on the port bow of the "Gulftrade."

Q. Did you see the collision?

A. No, sir; I did not.

Q. Were you looking to see it or did you not pay any attention to it?

A. I was looking, but when she hauled over I could not see which lighter was hit; I was trying to see which lighter it was, but I could not tell which one it was because I was on the other side away from it.

Q. After the collision did you see anything of the lighter that was hit?

A. I saw the lighter that we hit and which remained afloat on the port side of the steamer, but I did not see the other lighter.

Q. Do you mean the one that was sunk?

A. No, sir; I did not see that lighter.

Q. Did you see the "Taurus?"

A. No, sir; I did not see that tug either; not then.

Q. When did you see either one or both of those vessels after the collision?

A. That was after we had passed them and they had come around on the starboard side, under the stern of the ship.

Q. The starboard side of what?

A. The "Gulftrade."

Q. Did you notice whether the order to hard aport and full speed ahead, which you got and executed, succeeded in swinging the "Gulftrade" any?

A. I could not say because my eyes were on what

happened and I was also looking to see if those lighters were going to come down into us.

Q. How close to the "Churchman" was that lighter which you say came down on the port side?

A. It was right up against her, and she got away from her all right.

Q. How close to your boat did she get?

A. It got so close to us that it was practically alongside of us.

Q. Do you remember which lighter that was?

A. No, sir.

Q. You don't remember the number?

A. No, sir; and I don't think that I paid any attention to that at all.

Q. Were there any other vessels in sight in that vicinity that afternoon except your fleet and the tow which the "Taurus" was towing?

A. No, sir; there were no other vessels around in that vicinity at the time.

Q. Did you see any man from the steamer juan in the water and try and rescue any man?

A. I did not see him jump into the water, but I saw him after he got in the water.

Q. What did he have?

A. A life-ring.

Q. Did you see any rings thrown out from the "Gulftrade" that afternoon?

A. No, sir; I did not; because I was on the wrong side to notice that.

Q. The "Taurus" had passed out of your sight before the collision, I understand?

A. Yes, sir; she had.

Q. Do you remember having any conversation with the captain of the "Taurus" after the collision?

A. Yes, sir.

Q. When was that?

A. That was after we took the ship to the berth at the Gulf Refining Company's plant.

Q. Where did you go?

A. After we had got the ship in we went back to the sunken lighter.

Q. Was the "Taurus" there?

A. Yes, sir; when we got back there we found that the "Taurus" was there too.

Q. Just where was the "Taurus" then?

A. She was over there when we saw her to the eastward of the channel.

Q. That would be your starboard side going up?

A. Yes, sir; that would be on the starboard side as we were going on up there.

Q. What was this conversation that you had with the captain of the "Taurus" at that time?

Mr. Brown: Objected to as incompetent, irrelevant and immaterial.

A. I did not have a conversation directly with the master of the "Taurus," but I heard it said that he was turned in at the time.

Q. Where did you hear that?

A. While we were out there talking to the "Taurus."

Q. Who said that?

A. That was the mate of the "Taurus" that said that; he said his master was turned in.

Q. Do you know whether the master of the "Taurus" was there at the time that was said?

A. Yes, sir; he was right there at the time that was said. He could hear it.

Mr. Brown: This is objected to and I move to

strike it out as incompetent, immaterial and irrelevant.

Q. Who were present at the time that you had this talk you have just told us about?

A. Our crew and Captain Quillen and the crew of the tug "Taurus."

Q. Who were present from the "Taurus?"

A. Well, the whole crew.

Q. Were the captain and mate of the "Taurus" both there at that time?

A. Yes, sir; they were both there.

Q. What did you say that you heard the mate say at that time about the collision?

Mr. Brown: I renew my objection.

A. He said that the captain was turned in.

Q. Which captain?

A. The captain of the "Taurus."

Q. When?

A. At the time that the signals were blown.

Q. Was that before the collision?

A. Yes, sir; of course it was; it was while we were coming on up there after the "Taurus."

Q. Did the mate say how long he had been on the "Taurus?"

A. No, sir; I don't remember his saying anything about how long he had been on her.

Q. How wide a channel would you say that there was for a tug like the "Taurus" and her tow; how wide a channel would she have to go on up there?

A. Well, I should judge that she would have a channel four hundred feet wide there.

Q. Would you say that would be a fair estimate?

A. Yes, sir; I should say it was.

Q. Do you go up and down the channel there a good many times a year?

A. Yes, sir.

Q. How long have you been going up and down there?

A. For nine years.

Q. When you came in there with the "Gulftrade" what part of the channel was she using?

A. She was a little to the eastward of the Schuylkill Ranges going in there.

Q. Did you notice that?

A. Yes, sir; I did.

Q. Have you had considerable experience in towing vessels like the "Gulftrade," vessels of her draft, in the Schuylkill during the time you have been on tugs?

A. Yes, sir; I have had a great deal of experience in that sort of work.

Q. In your opinion would it have been safer for the "Gulftrade" to have navigated any closer to the eastward side of the channel than she did?

A. No, sir; I do not think it would have been safe for her to have gone over there.

Q. Why not?

A. Because it is a rocky bottom over there.

Q. Are you still on the "Triton?"

A. Yes, sir.

Cross-examination.

By Mr. Brown:

XQ. You remember a short time after this collision being summoned before the United States Local Inspectors here, don't you?

A. Yes, sir I remember that.

XQ. You were called there?

A. Yes, sir.

XQ. And you remember testifying there, don't you?

A. Yes, sir; I remember that I was asked some questions by the inspectors.

XQ. And you answered them?

A. Certainly.

XQ. Do you remember what you said in the testimony that you gave there?

A. Well, I remember something; I don't know as I could give you the exact words though.

XQ. When you first saw the "Taurus" and her tow you were about opposite Fort Mifflin docks?

A. Yes, sir; we were about there at the time that I first saw that tug and tow.

XQ. And you say that she was about entering the mouth of the Schuylkill at that time?

A. She had not entered.

XQ. She was about entering?

A. Yes, sir.

XQ. Was it before or after the "Gulftrade" got under way that the first whistle was blown?

A. That whistle was not blown until after we had got under way.

XQ. The "Gulftrade" blew after she got started?

A. Yes, sir.

XQ. How long was it after she got under way that she blew that one whistle, would you say?

A. The first one?

XQ. The first time she blew?

A. We were right opposite Fort Mifflin when we made fast and the captain went on the bridge just shortly after we made fast.

XQ. All that was before the "Gulftrade" blew?

A. Yes, sir.

XQ. How soon after the captain went to the bridge of the steamer was that first signal blown?

A. It was shortly after we made fast that that first signal was blown to the "Taurus."

XQ. The "Taurus" was then entering the mouth of the Schuylkill, was she not?

A. Well, I should say that she was about ready to enter the mouth of the Schuylkill then.

XQ. How far astern of the "Taurus" would you say that you were at that time?

A. Well, as near as I could judge we were about three-quarters of a mile from her then.

XQ. Were you in the pilot house of your tug from the time that you made fast alongside of the "Gulftrade" until after the collision was over?

A. Yes, sir; I was in the pilot house of the "Triton" during all of that time.

XQ. Was there any one in there with you?

A. No, sir; there was not.

XQ. Could you see, from where you were at the time of the first whistle was given, the red and black buoys at the mouth of the Schuylkill River?

A. Yes, sir; at the time that the first signal was blown I could see them both.

XQ. What was the position of the tug "Taurus" with respect to the buoys at that time?

A. She was right in the center of the channel then I should say, with the ranges on.

XQ. Right abreast of the buoys?

A. Yes, sir.

XQ. How much line was there between the tug and the sand lighters?

A. I should say twenty-five fathoms.

XQ. You say you heard the "Taurus" blow too?

A. Yes, sir; she answered the signal just after the steamer blew to her.

XQ. It was after that first whistle signal was exchanged, after the "Taurus" had answered the steamer's signal, that you say that you saw the "Taurus" alter her course?

A. Yes, sir.

XQ. And you think she altered her course to port and proceeded on up the Schuylkill?

A. Yes, sir; that is what she did the way it looked to me; starboarded her wheel.

XQ. Do you know whether there was any change of course made on the part of the "Gulftrade?"

A. After we blew the first signal we had not entered the mouth of the Schuylkill, and we had to keep up the river to enter the Schuylkill, and that gave me a chance to see what was going on ahead.

XQ. What I want to know is whether she altered her course after the first signal?

A. Yes, sir; she did.

XQ. I mean the "Gulftrade?"

A. Yes, sir.

XQ. You are sure about that?

A. Of course she did.

XQ. How did she change?

A. She came around to port.

XQ. To do what?

A. So as to enter the mouth of the Schuylkill.

XQ. You testified that there was a second one-blast signal blown by the "Gulftrade?"

A. Yes, sir; a little while after she blew the first signal she blew again to the "Taurus."

XQ. About how long was that signal after the first signal was blown by the steamer?

A. I should judge that it was about three minutes after the first signal was blown.

XQ. And at the time that second signal was blown by the "Gulftrade" where was she?

A. She had not got around into the Schuylkill because the "Taurus" was way ahead, but she was getting around ready to enter the Schuylkill.

XQ. Then she had altered her course so as to get into the Schuylkill?

A. Yes, sir; she had altered her course so as to enter the mouth of the Schuylkill River.

XQ. Had she got on the ranges at that time?

A. No, sir; she had not.

XQ. How long was it after that that she did get on the ranges would you say?

A. Just after she blew the last signal.

XQ. What signal was that?

A. That was the third signal that she blew to the "Taurus."

XQ. Just after the "Gulftrade" blew the third signal she got on the ranges?

A. Yes, sir; that was just after the last signal that she blew.

XQ. And it was then that she was entering the mouth of the Schuylkill?

A. Yes, sir; at that time she was entering the Schuylkill River and was going up there.

XQ. What was the position of the black and red buoys with respect to the "Gulftrade" then?

A. The red I couldn't see.

XQ. Where was the black buoy?

A. On the port quarter of the ship.

XQ. So that the black buoy was on the port quarter of your tug?

A. Off the port quarter of the "Gulftrade."

XQ. Where was your tug with respect to the port quarter of the ship?

A. The tug "Triton" was made fast on the port quarter of the ship after the tow was made up.

XQ. So you could see the black buoy?

A. Yes, sir; of course we were lower than the ship and her bridge.

XQ. I understand you to say that the black buoy was off the port quarter at the time that the last signal was given; that was the third signal?

A. Yes, sir.

XQ. That is correct?

A. Yes, sir; as near as I can remember.

XQ. At that time where was the "Taurus" and her tow with respect to the "Gulftrade?"

A. She was about on the ranges.

XQ. Do you mean that at the time the last whistle was blown by the "Gulftrade" the tug "Taurus" and her tow were about on the ranges?

A. At the time the third whistle was blown we were to the starboard of the ranges.

XQ. I understood you to say just now that at the time the third whistle was blown by the "Gulftrade" you had got on the ranges at the mouth of the Schuylkill? Am I correct? As a matter of fact did you see the ranges?

A. Yes, sir.

XQ. When did the "Gulftrade" get on the ranges?

A. I will straighten that out. I do not know exactly when that was.

XQ. You had nothing to do with the navigation of the fleet, had you?

A. No, sir; but I had to watch everything.

XQ. And you do not know just when the "Gulftrade" got on the ranges, do you?

A. No, sir; I could not tell you exactly when she did get on the ranges.

XQ. In fact you do not know the position of the "Gulftrade" with respect to the ranges, do you?

A. From what I could see I should say she was to the eastward of the ranges.

XQ. Could you see the ranges?

A. Yes, sir.

XQ. Do you remember testifying before the United States Local Inspectors?

A. Yes, sir.

XQ. Do you remember being asked this question by Captain Sargent.

"Q. Being on the port quarter of the 'Gulftrade' were there any land marks from which you could form an opinion as to whether the tow was in the center of the channel or to the eastward or to the westward of the channel at the time this last whistle signal was blown?

A. I could not tell because I had my eyes on the bridge of the ship." Do you remember being asked that question and the answer to it as I have read it to you?

A. No, sir.

XQ. You don't remember stating that you could not tell that because you were not watching the ranges but had your eyes on the bridge of the ship?

A. No, sir; I can't recollect making any such statement as that was.

XQ. Do you remember testifying before the Local Inspectors that you did not remember whether you were on the ranges or not?

A. No, sir; I don't remember stating that I did not know whether we were on the ranges or not.

XQ. You remember no such testimony?

A. I don't remember saying that.

XQ. Do you remember when the "Gulftrade" got on the ranges that day?

A. No, sir.

XQ. You don't know?

A. No, sir.

XQ. In fact you were unable to see the ranges because of your position; is that correct?

A. Yes, sir.

XQ. At the time that the last whistle signals were given was the tug "Taurus" and her tow off your port bow?

A. Yes, sir; at the time the last whistles were blown; yes, sir; that is correct.

XQ. About how far ahead of the "Gulftrade" were they at that time, would you say?

A. That I can't say.

XQ. You could not form any estimate as to that?

A. No, sir.

XQ. Were they ahead or abreast of the buoy?

A. They seemed to be on the port side.

XQ. When the last signal was given?

A. Yes, sir; at the time that the last signal was blown by the ship.

XQ. Were they not amidships on the port side then?

A. Of the ship?

XQ. Yes, of the "Gulftrade?"

A. No, sir; we were not up to them yet.

XQ. How far from the last pair of barges was the bow of the "Gulftrade" then?

A. I could not say.

XQ. Can you estimate it?

A. No, sir; I could not estimate it.

XQ. As a matter of fact you were watching the master of the "F. A. Churchman" to get his signals?

A. Well, I was looking around there but I was watching the master of our tug too.

XQ. The master of the "Triton" who was on the bridge of the "Gulftrade?"

A. Yes, sir.

XQ. You wanted to get his signals?

A. Yes, sir.

XQ. And obey them?

A. Certainly when he gave them to us.

XQ. And you were not responsible for the navigation of the "Gulftrade," were you?

A. No, sir; I did not have anything to do with the direction of the navigation.

XQ. Were you not paying attention to the navigation of the ship either?

A. I was looking there to see what was going on.

XQ. But you were not paying particular attention to anything except the orders that your captain on the bridge of the ship might give you?

A. Yes, sir.

XQ. You said that you remembered the last one-whistle signal given by the "Gulftrade" which was also a signal of one blast; that is correct.

A. Yes, sir.

XQ. Did you hear an answer from the "Taurus" to that last or third one-whistle signal?

A. Yes, sir; she answered with a similar signal of one blast also.

XQ. How long after the signal was blown by the "Gulftrade" was it answered by the "Taurus;" I mean the last one-whistle signal; the third one?

A. The "Taurus" answered immediately.

XQ. At that time did you know where the black buoy was with respect to the "Gulftrade?"

A. Yes, sir.

XQ. Where was it?

A. It was on her port bow but I do not know how far we were from it.

XQ. Had you or not got inside of the buoys at the time that the last whistles were blown?

A. No, sir; we had not got inside them when the last whistles were blown.

XQ. You said that you remembered testifying before the Local Inspectors; do you recollect this question by Captain Sargent and your answer:

"Q. At that time, that is, the time the last whistle was blown to the 'Taurus' what was the position of the 'Triton' relative to the bearing of the black buoy No. 1 marking the west side of the channel at the entrance to the Schuylkill?

A. I should say that it was about on the port quarter, four points on our port bow." Do you remember that?

A. Yes, sir.

XQ. That is what you said?

A. Yes, sir; I must have said that.

XQ. Do you particularly remember your answer in which you said that it was on your port quarter about four points on your port bow?

A. Yes, sir.

XQ. Now, let me ask you this: was it on your port quarter or on your port bow then?

A. It was on the port bow, but I would call it on the port quarter.

XQ. It was on the port bow but you would call it on the port quarter?

A. Yes, sir.

XQ. That is what you mean?

A. Yes, sir.

XQ. You testified that the channel at the entrance of the Schuylkill was 250 feet wide?

A. More for some vessels.

XQ. For deep draft vessels such as the "Gulf-trade?"

A. Yes, sir.

XQ. Did you ever measure it?

A. No, sir; I never did.

XQ. Did you ever make any soundings to discover that?

A. No, sir.

XQ. That is merely an estimate of yours?

A. Yes, sir.

XQ. And your recollection is that for deep draft vessels it is 250 feet wide?

A. Yes, sir; from what I have seen and heard other men say and I have also seen other vessels passing there similar to the "Gulftrade."

XQ. With a vessel entering the mouth of the channel on the flood tide, that is a vessel of the size and draft of the "Gulftrade," is there a tendency on the part of such vessel to sheer to one bank or the other?

A. Not much I should say; not a heavily laden vessel would be liable to shift much.

XQ. Did you notice the course of the "Gulftrade" as she came into the Schuylkill?

A. No, sir; I did not; you mean did I notice the compass course there?

XQ. Do you know what course she was on?

A. No, sir; I could not tell you that.

XQ. Was not the course of the "Taurus" and her tow about parallel with the "Gulftrade?"

A. The way it seemed to me was that the "Gulftrade" was to the starboard of the "Taurus."

XQ. And about parallel?

A. I don't know what you mean.

XQ. Were they heading in the same general direction—about in the same direction?

A. They were running in the same direction; the "Taurus" and her tow were further up.

XQ. But their lines were more or less parallel?

A. Yes, sir; probably.

XQ. You know what I mean by parallel, don't you?

A. Yes, sir. Same direction.

XQ. Do you know exactly when the collision took place on this day?

A. No, sir; I could not tell you what was the exact time of the collision.

XQ. And you do not know the exact position of the "Taurus" and her tow then?

A. No, sir; I do not know the exact position of the "Taurus" because she had gone out of sight then.

XQ. Did you see the "Gulftrade" strike any lighters that the "Taurus" had towed?

A. No, sir; I did not.

XQ. So that you do not know whether she struck before or after the "Taurus" went out of your sight?

A. No, sir; of course I don't know whether it was before or after.

XQ. A change of course on the part of the "Gulftrade" would have hid the "Taurus" or put her out of your sight just the same as a change of course by the "Taurus?"

A. It might have but I did not see her make any change of course.

XQ. Did you get the signal to come ahead when you saw those three barges coming down on the port side of the "Gulftrade?"

A. No, sir; before that.

XQ. You got that signal after you lost sight of the "Taurus," did you?

A. Before.

XQ. Do you mean that you got that signal before you lost sight of her?

A. Yes, sir.

XQ. So that when you got that signal you could still see the "Taurus?"

A. Yes, sir; she was still in sight at the time that I got that signal.

XQ. You testified on direct examination that one of the sand lighters landed very close to you?

A. Yes, sir.

XQ. Do you mean that she went ashore?

A. No, sir; she drifted down by us; she swung right down there by us.

XQ. Could you tell how far you were from the western or southern bank at that time?

A. No, sir; not exactly.

XQ. Could you approximate it?

A. I should judge 1200 feet.

XQ. What order was given you from the bridge of the "Gulfstream" when you got the signal to go ahead?

A. Hard a port.

XQ. Would that throw your bow to starboard?

A. Yes, sir; certainly.

XQ. And you were on the port quarter of the "Gulfstream?"

A. Yes, sir; on the port quarter.

Cross-examination.

By Mr. Dewson:

XQ. As I understand your testimony you were coming up the Delaware River and had to make a change of course to port in order to enter the mouth of the Schuylkill?

Mr. Brown: I object to any cross-examination of this and other witnesses by counsel for the "Gulf Stream" except in so far as those questions relate to the testimony of the witness in chief which tends to throw blame on the "Gulfport" as distinguished from the tug "Triton" and the tug "Chesshamon." In other words it is my contention that counsel for the "Gulfstream" cannot cross-examine except as to the controversy between the "Gulfstream" and the

tugs towing her, and not as to the questions between the "Gulftrade" and the "Taurus." If counsel desires to take up the question between the "Taurus" and the "Gulftrade" he should make these witnesses his own witnesses.

Mr. Dawson: I stand upon my right to cross-examine this and other witnesses who are called as witnesses for the tugs "Churchman" and "Triton."

Mr. Long: These witnesses for the "Triton" and the Independent Pier Company, and for the "F. A. Churchman" and her owners are tendered to counsel for the "Gulftrade" and the Charles Warner Company for cross-examination.

A. Yes, sir.

XQ. The tug "Taurus" with her barges in tow were ahead of you?

A. Yes, sir.

XQ. They were a considerable distance inside the mouth of the Schuylkill River before the "Gulftrade" and her attending tugs entered the Schuylkill River?

A. Yes, sir; because they got there in the Schuylkill before we did; they were ahead of us.

XQ. The "Gulftrade" did finally enter the mouth of the Schuylkill and proceeded up the channel; is that right?

A. Yes, sir.

XQ. Were the tug "Taurus" and her tow ahead?

Mr. Brown: Objected to and I desire to have this objection apply to all similar questions along this line.

A. Yes, sir.

XQ. I do not want to cross-examine you on your entire story but coming down to the third time that the "Gulftrade" blew a signal of one blast, which blast, as I understand, was answered by the "Taurus" with a similar one-blast signal?

A. Yes, sir.

XQ. You recollect that?

A. Yes, sir.

XQ. At the time that signal was given and answered where was the "Taurus" and her tow with respect to the "Gulftrade;" was she ahead, abreast of the ship or where?

A. She was ahead of the "Gulftrade."

XQ. You have said before that while you could not estimate the distance, you are certain that the "Taurus" and her tow were ahead of the "Gulftrade?"

A. Yes, sir.

XQ. That is correct?

A. Yes, sir.

XQ. Am I correct in my understanding that you testified that the "Taurus" and her tow were off your port bow?

A. Yes, sir; that is what I said.

XQ. That is correct?

A. Yes, sir.

XQ. You have made use of the term "port quarter" in your testimony; do I understand that you mean that the "Taurus" and her tow were off the port bow?

A. Yes, sir; you see there are eight points in a quarter circle, and she was about four points off.

XQ. Four points off her beam?

A. Yes, sir; that is right.

XQ. Then do I understand your testimony to be that, at the time we are discussing, that is, at the

time that the third one-blast signal was blown by the "Gulftrade" and answered by the "Taurus," the "Taurus" and her tow were ahead of the "Gulftrade?"

A. Yes, sir; further up the river.

XQ. And they were also about four points on your port bow?

A. Yes, sir.

XQ. That is correct?

A. Yes, sir; it is.

XQ. In other words the "Gulftrade" and your tug, the "Triton," were to the starboard of the tug "Taurus" and her tow?

A. Yes, sir.

XQ. And it was about that time that you got the order from the bridge of the "Gulftrade" to go ahead and hardaport?

A. Yes, sir; practically right away.

XQ. You would say that it was immediately after the signal was blown?

A. Yes, sir.

XQ. And at that time the "Taurus" was about four points on your port bow?

A. Yes, sir.

XQ. And ahead?

A. Yes, sir. Ahead too.

XQ. Just what did you see the "Taurus" do after that time, that is after the third-whistle signal had been given and answered by the "Taurus?"

A. She went to the starboard. Sheered.

XQ. That is to her starboard?

A. Yes, sir.

XQ. That would be across the bow and course of the steamer "Gulftrade."

A. Yes, sir; it was. Across the course of the ship.

XQ. When you use the word "ship" you mean the "Gulftrade," don't you?

A. Yes, sir; surely.

XQ. Did you observe the "Taurus" make that change of course to her starboard?

A. Yes, sir.

XQ. Was that a decided change or a slight change?

A. Quite a change.

XQ. It was what you river men call a sheer to starboard?

A. Yes, sir.

XQ. She went then entirely out of your sight?

A. Yes, sir; she got over there so far that she was hid from my view.

XQ. And what put her out of your sight was that she got so far across the bow of the "Churchman" which was ahead of you and across the bow of the "Gulftrade" that you could not see her?

A. That is right; I was unable to see her when she got so far across there.

XQ. You never did see the "Taurus" after she sheered across the bow of the "Gulftrade" until after the collision had happened, did you?

A. No, sir; I did not see her again until the collision was all over.

XQ. And then you saw her come down the starboard side of the "Gulftrade?"

A. Yes, sir.

XQ. And one of her three boats or barges got over on the starboard side of the "Gulftrade?"

A. Yes, sir.

XQ. From the time that the third one-blast signal was given and answered until down until the time when the tug "Taurus" disappeared from your sight because she had sheered over to her starboard, was there any change made in the course or heading of the steamer "Gulftrade?"

A. That I couldn't say.

XQ. That you didn't notice?

A. I did not notice any change.

XQ. So far as you know she made no change at all?

A. The "Gulftrade" did not make any change that I could see.

XQ. Did you feel on your tug the effect of any change in the course of your fleet?

A. No, sir; I did not.

XQ. You have been asked the question with respect to the black buoy on the port side going up and the red buoy on the starboard side going up; can you tell us approximately where, with respect to those buoys the collision occurred; was it above or below or abreast of them?

A. It was above.

XQ. About how far was it above to the best of your judgment?

A. I could not say that because I was not careful to tell that.

XQ. Have you been on tugs that have handled ships like the "Gulftrade" in coming into the Schuylkill, on many previous occasions?

A. Yes, sir.

XQ. How did the speed at which the "Gulftrade" was proceeding on this occasion compare with the speed of other vessels which you have seen going up there on other occasions?

A. It was just about the same.

By Mr. Long:

XQ. Did you notice the heading of the "Gulftrade" immediately after the collision?

A. No, sir.

By Mr. Brown:

XQ. You have testified in answer to Mr. Dawson's questions with regard to your statements about port quarter and off the bow?

A. Yes, sir.

XQ. So that we may have it clear on the record what do you call that sector from amidships forward to the bow?

A. There are eight points from the beam to the bow and I should judge that this tug was about four points or half way there between beam and bow.

XQ. Do you call the port quarter that sector from the beam to the stern?

A. Yes, sir.

XQ. On the port side of course?

A. Yes, sir.

XQ. And from the beam to the bow on the port side is port bow, is it?

A. Yes, sir; it is.

XQ. So that when you said four points on the port quarter you meant four points on the quarter extending from the beam to the stern?

A. No, sir; four points on the bow.

XQ. Then what do you mean, that she was on the port bow or the port quarter?

A. Port bow.

XQ. You say that you were four points off the port bow at that time?

A. Yes, sir.

XQ. That is half way from the bow to the beam?

A. Yes, sir; of course that is as near as I can give it; that is about right.

XQ. If she was off the beam you would say that she was four points off the port quarter?

A. Yes, sir.

XQ. But if she was four points off the port bow she was within that sector from the beam to the bow?

A. Yes, sir.

XQ. And not from the beam to the stern?

A. No, sir.

XQ. At the time that the last whistles were exchanged between the "Gulftrade" and the "Taurus," was the "Churchman" parallel to the "Gulftrade" or was her bow or stern pointing in to the Gulftrade?"

A. She was not clear.

XQ. Was she parallel?

A. She was practically alongside at that time.

XQ. She was not stern to and clear of the steamer at that time, was she?

A. Not then.

XQ. At any time?

A. Not when the last signals were exchanged.

XQ. Was she at any time?

A. Afterward.

XQ. Then it was after the last signals were exchanged and the order had been given to go ahead on the engines?

A. Yes, sir.

XQ. Do you know whether or not the "Churchman" got a similar signal at that time?

A. Yes, sir; of course she got the same signal that we got.

XQ. And at the same time?

A. Yes, sir.

XQ. Did that throw the stern of the "Churchman" out?

A. Yes, sir.

XQ. Was it before or after that that you lost sight of the "Taurus?"

A. After that.

XQ. Could you estimate the distance between the bow of the "Gulftrade" and the "Taurus" at the time that you lost sight of that tug?

A. No, sir; I don't think that I could tell you very well just what that was.

XQ. Could you estimate the distance between the port side of the "Gulftrade" and the "Taurus" at the time that you lost sight of the "Taurus?"

A. No, sir; I did not pay enough attention to that to be able to give you that.

XQ. You know that the "Taurus" crossed the bow of the "Gulftrade" because you saw her come down on the other side?

A. Yes, sir.

XQ. You do not know when that happened, do you?

A. No, sir.

XQ. You can't tell us that?

A. No, sir.

By Mr. Dawson:

XQ. So that there may be no mistake about it on the record, am I right or wrong in understanding that at the time of the one-blast signals given and answered the third time, you looked forward and saw the "Taurus?"

A. Yes, sir.

XQ. And she was then about four points on the port bow?

A. Yes, sir.

XQ. Is there any question about that?

A. No, sir; they were on the port bow.

XQ. About four points?

A. Just about.

XQ. And ahead of you?

A. Yes, sir.
XQ. And ahead of the "Gulftrade?"
A. Yes, sir.

By Mr. Brown:

XQ. Where were the barges that the "Taurus" had in tow at that time?
A. Astern.
XQ. Astern of the "Taurus?"
A. Yes, sir; astern of that tug and on the port bow of the ship.
XQ. Did you see the barges then?
A. Yes, sir; of course I could see the barges just the same as I could see the tug.
XQ. They were astern of the "Taurus?"
A. At that time, yes, sir.
XQ. Could you tell how far ahead, if they were ahead, of the "Gulftrade" they were at that time?
A. No, sir; I would not be able to tell you just what that distance was.
XQ. Do you know whether they were ahead?
A. Yes, sir.
XQ. They were ahead?
A. As far as I could tell they were ahead.
XQ. But you do not know how far they were ahead of you at that time?
A. No, sir.

Re-direct examination.

By Mr. Long:

RDQ. Did you say that the "Churchman" got the same order that you did to go ahead?
A. Yes, sir.
RDQ. Do you know whether she executed it?

A. Yes, sir.

RDQ. Did you see the "Churchman" at the time that her engines were put ahead after the order to go ahead?

A. Yes, sir.

RDQ. Could you see the water under her propellor?

A. Yes, sir.

RDQ. See that her engines were working?

A. Yes, sir.

RDQ. Had you lost sight of the "Taurus" at the time that order was given?

A. No, sir; I had not entirely lost sight of that tug at the time.

RDQ. You could still see her?

A. Yes, sir; going off there.

RDQ. In other words she had started her sheer then but had not entirely gotten out of sight when the order was given to go ahead full speed on the engines?

A. No, sir; she had not then entirely got out of my sight; I could still see her.

EPHRAIM WILLIAMS, having been duly sworn according to law was examined and testified as follows (for the "Churchman"):

By Mr. Long:

Q. How old are you?
A. Sixty-three.
Q. Where do you live?
A. 6734 Race Street, Philadelphia.
Q. How long have you been following the water?
A. Forty-six years.

Q. You were the steward of the "F. A. Churchman" on October 1, 1923, at the time there was a collision between the "Gulftrade" and the Charles Warner Company's Lighter No. 18?

A. Yes, sir.

Q. Do you know anything about the collision at all?

A. No, sir; I know when he blowed to let go the tug's lines.

Q. Who blew?

A. The mate of the "Churchman;" I was around the galley there.

Q. Working?

A. Yes, sir; I was doing some work there; I did not look out much but I know they got the order to take in the lines.

Q. Do you remember any whistles being blown there that day except this whistle about the lines?

A. I did from the ship.

Q. From the "Gulftrade?"

A. Yes, sir.

Q. Did you hear any from the tug "Taurus?"

A. No, sir; I did not hear.

Q. But you did hear whistles from the "Gulftrade" which you were alongside?

A. Yes, sir; I just remember that that steamer did blow but I was not paying much attention.

Q. Do you know what she was blowing?

A. No, sir; I really cannot tell you just what she was blowing.

Q. You paid no attention?

A. I can't say that I did.

Q. Did you see the tug "Taurus" and the four lighters that she had in tow?

A. Yes, sir; I saw the tug and some of the lighters anyway; I guess I saw them all.

Q. Where were they?

A. She was off from us at the time I saw them; I don't know what she was doing.

Q. Did you see any of those lighters come down there drifting ahead of the "Churchman?"

A. No, sir; I can't say that I did.

Q. You did not see the collision?

A. No, sir.

Q. After you heard the "Churchman" blow to let go the lines were the lines let go from the "Gulftrade?"

Mr. Brown: Objected to as leading.

A. Yes, sir.

Q. Did you see what the "Churchman" did after the lines were let go?

A. Yes, sir; after that we went around to the starboard side of the steamer.

Q. To the starboard side of the "Gulftrade?"

A. Yes, sir.

Q. Did you see any lighter there then?

A. No, sir.

Q. None at all?

A. I saw one bottom up.

Q. Is that all that you know about the collision?

A. Yes, sir; I guess that I have told you about everything that I know.

Q. Are you still by the "Churchman?"

A. Yes, sir.

JAMES ROBINSON, having been duly sworn according to law, was examined and testified as follows (on behalf of the tug "Chewsmen"):

By Mr. Long:

Q. How old are you?
A. Forty-seven.
Q. Where do you live?
A. 7406 Addison Street, Philadelphia.
Q. You go to sea?
A. Yes, sir.
Q. Do you hold any license?
A. Yes, sir; engineer.
Q. What license do you hold?
A. I hold license as *chief* engineer for 750 tons; second assistant unlimited.
Q. How long have you held those licenses?
A. Since 1902 or 1904.
Q. Were you the *chief* engineer on the tug "F. A. Chewsmen" on October 1st, 1922?
A. Yes, sir.
Q. Do you remember a collision happening that day between the steamer "Gulftrade" and the Charles Warner Company's Lighter No. 28?
A. Yes, sir; I was on the tug that day.
Q. Were you on watch that afternoon as the "Gulftrade" was coming up to her berth in the Schuylkill?
A. Yes, sir.
Q. The "Triton" and your tug were alongside of the "Gulftrade" as she came on up?
A. Yes, sir; both tugs.
Q. Where was the "Chewsmen" made fast to the "Gulftrade" that day?
A. On the port bow forward.

Q. Did you continue on duty until after the collision or did you go off watch?

A. I was there all of the time.

Q. You were in the engine room?

A. Yes, sir; in the engine room.

Q. Do you remember what time it was that the collision occurred between the ship and the lighter?

A. I do not know the exact time but it was somewhere in the neighborhood of three o'clock.

Q. In the afternoon?

A. Yes, sir; afternoon.

Q. Where did you stand your watch that day?

A. In the engine room.

Q. How did the steamer ground along there; were you helping her or not?

A. She was going on there under her own steam.

Q. Were the engines of your tug in motion from the time that you entered the Schuylkill until just before the collision occurred; if you know when it occurred?

A. They were not.

Q. Were you paying any attention to whether that were being blown outside of your boat?

A. No, sir; I was not paying any attention to any whistle at all.

Q. Can you tell us of any whistle that you heard from either the "Gulfwing" or the "Tuscan"?

A. No, sir; I told you that I did not pay any attention to whistle at all that day.

Q. Did you hear the "Tuscarawas" blow any whistle after the collision?

A. I noticed the signal that was given to let go the lines from the ship.

Q. That was after the collision?

A. Yes, sir; I guess that was before anything happened.

Q. You think that it was before the collision?

A. Yes, sir; I guess that it was before the collision happened; I am sure it was.

Q. Did you receive any orders from your pilot-house with reference to your engines, that is moving your engines, after your tug got into the Schuylkill River?

A. When we had let go there we got orders to back out of the way.

Q. Did you see the tug "Taurus" and her four lighters at any time that afternoon?

A. I never noticed them at all until after the collision was all over.

Q. Then what did you see?

A. When I saw her she was moving to get this lighter and shove it ashore.

Q. What lighter do you mean?

A. I mean the lighter that was around there.

Q. What was she trying to do with it?

A. That was drifting around there and she wanted to get to it so as to prevent its sinking.

Q. Where was she then?

A. She was on the eastern side of the Schuylkill when I saw her.

Q. Was that after your tug had backed away?

A. Yes, sir.

Q. Did you see any other of the "Taurus's" barges around there at that time?

A. Yes, sir; there was one there which was bottom side up which I saw also.

Q. Was your tug astern of the "Gulfstream" at that time?

A. Yes, sir; I should say that we were astern but I can't tell you for certain though.

Q. You did not see the collision?

A. I did not, no, sir.

Q. And you did not know that it had occurred until after it had occurred, as I understand?

A. That is right.

Q. Did you feel any jar of the collision?

A. No, sir; nothing like that.

Q. Are you still on the "Chesebrough?"

A. Yes, sir; I am still on her.

Cross-examination.

By Mr. Brown:

XQ. Your tug was alongside the "Gulftrade" but was further forward than the "Triton?"

A. Yes, sir.

XQ. The captain of your tug was on the "Gulftrade?"

A. Yes, sir.

XQ. You came from the Delaware into the Schuylkill and intended to proceed up the Schuylkill?

A. Yes, sir; with the steamer.

XQ. Sometime after you entered the Schuylkill you received a signal relative to your engines?

A. I did, I think.

XQ. That signal came from your pilot-house?

A. Yes, sir; I do not remember just what the signal was that I received.

XQ. Did you receive a signal?

A. I think I did.

XQ. Are you sure about it?

A. I don't remember as I did.

XQ. You don't remember as you received any signal at all?

A. Not until we backed away.

XQ. Could you see outside?

A. I could if I looked out the door.

XQ. Did you look out the door?

A. No, sir; I don't remember as I did.

XQ. You did not look out so far as you remember?

A. I don't think that I did.

XQ. Then you do not know what was taking place outside?

A. No, sir.

XQ. You were paying no attention to that?

A. No, sir; not at all.

XQ. Did you receive any signal at all in the engine room out there alongside the "Gulftrade?"

A. Yes, sir.

XQ. What was it?

A. The signal that was given was to go back out of the way.

XQ. Was that the first signal that you had received for some time, or don't you remember?

A. Yes, sir: that was the first signal that I had received along there.

XQ. That was to set your engines in motion?

A. Yes, sir. To back.

XQ. You do not know when the collision took place?

A. No, sir.

XQ. And you did not have any idea, where you were, that there had been a collision?

A. No, sir; I had not.

XQ. You did not see anything?

A. No, sir; I did not see anything until after it was all over.

XQ. And you did not feel any shock of a collision or jar?

A. Nothing like that.

XQ. So that you don't know whether the signal was before or after the collision?

A. No, sir.

HORACE DERRICKSON, having been duly sworn according to law was examined and testified as follows:

By Mr. Long:

Q. How old are you?
A. Twenty-seven.
Q. Where do you live?
A. 514 So. 54th Street, Philadelphia.
Q. You follow the water, do you?
A. Yes, sir.
Q. How long have you been following the water?
A. Over four years.
Q. You are now on the tug "F. A. Churchman?"
A. Yes, sir.
Q. Were you on her on October 1st, 1923, when there was a collision between the steamer "Gulftrade" and the Charles Warner Company's lighter?
A. Yes, sir; I was.
Q. What position did you hold on the "Churchman" at that time?
A. I was deck hand.
Q. The tugs "Churchman" and "Triton" were alongside the "Gulftrade" as she was being taken to her dock on the Schuylkill River that day?
A. Yes, sir; we were.
Q. Were you on duty when your tug, the "Churchman" came alongside the "Gulftrade" that day?
A. Yes, sir; I was.
Q. What did you do when she came alongside?
A. I put two lines on the ship.
Q. Where?
A. On the port bow of the "Gulftrade."
Q. Did you see the "Triton" come there too?
A. She was also there alongside.

Q. Where was the "Triton" made fast?

A. On the port quarter.

Q. Who was the master of your tug that day?

A. Herman Marvill.

Q. Did he remain on your tug after you were made fast or did he go on the "Gulftrade?"

A. Just as soon as we got alongside of the "Gulftrade" he went on the steamer.

Q. Did the captain of the tug "Triton" also go on board of the "Gulftrade?"

A. Yes, sir; he went on the steamer also at the same time as our captain did.

Q. And they remained there did they?

A. Yes, sir; they stayed there after the steamer began to go on up the river.

Q. Where did they go on the steamer?

A. On to the bridge of the steamer.

Q. What part of the bridge did the master of the "Triton" go?

A. On the upper part of the bridge.

Q. Where did he stand?

A. About amidships.

Q. Where was Captain Marvill standing?

A. He was up there with him.

Q. Did you continue to work around the deck of the "Churchman" as you came up there, or what did you do?

A. Yes, sir; I was doing whatever there was to be done as we went along.

Q. You found things to do?

A. Yes, sir; there is always work to do.

Q. After you had made fast to the "Gulftrade" were the engines of your tug in motion?

A. Not at that time, no, sir.

Q. How were you moving then?

A. The "Gulftrade was proceeding under her own steam and we were going along with her.

Q. Were the engines of the "Triton" moving then?

A. No, sir.

Q. Did you see the tug "Taurus" with her four scows in tow after you made fast to the "Gulftrade?"

A. I did, yes, sir.

Q. Where was the "Gulftrade" and her two attending tugs at the time that you first saw the "Taurus?"

A. We were almost to the mouth of the Schuylkill at the time that I saw her.

Q. Did you hear any whistles from the "Gulftrade" to the "Taurus" as you proceeded along there?

A. Yes, sir; the steamer blew a signal of one blast on her whistle to the "Taurus."

Q. Did you hear any answer to the "Gulftrade's" signal from the "Taurus?"

A. Yes, sir; she blew a one-blast signal, too.

Q. Had the "Taurus" entered the Schuylkill when those first one-whistle signals were exchanged, or was she about to enter at that time?

A. She had entered.

Q. Where was the "Gulftrade" and the two tugs "Triton" and "Churchhill" when those first whistles were exchanged; had they entered the Schuylkill?

A. No, sir; we were still in the Delaware at that time.

Q. Did you hear any other whistles blown by the "Gulftrade?"

A. Yes, sir; twice after that.

Q. What do you mean by that?

A. She blew a blast of one whistle on three separate occasions as we went along there.

Q. That was by the "Gulftrade?"

A. Yes, sir.

Q. You mean that there were three separate blasts, one blast on three different occasions?

A. Yes, sir; one whistle at three different times.

Q. Were they answered by the "Taurus?"

A. Yes, sir.

Q. Where was the "Taurus" when the second signal of one blast was given and exchanged?

A. She had entered the Schuylkill.

Q. Was she proceeding on up the Schuylkill then?

A. Yes, sir.

Q. Had the "Gulftrade" entered the Schuylkill when that second signal was blown by her and answered by the "Taurus?"

A. No, sir; she had not actually entered the mouth of the Schuylkill then.

Q. Can you tell us where she was then, when that second whistle signal was blown, with respect to the mouth of the Schuylkill?

A. She was about at the buoys which mark the mouth of the Schuylkill then.

Q. What are those buoys?

A. One is a nun buoy and the other a spar buoy.

Q. What color are they?

A. The red buoy is on the starboard and the black on the port side as you enter.

Q. Where was the "Taurus" at the time that the third-whistle signal was given by the "Gulftrade" and answered by the "Taurus?"

A. She was still in the Schuylkill, further up.

Q. Proceeding on up the Schuylkill River?

A. Yes, sir.

Q. Where was the "Gulftrade" at the time that third-whistle signal was given?

A. We were at least three or four ship lengths astern of the "Taurus" and her tow then.

Q. You mean lengths of the "Gulftrade?"

A. Yes, sir.

Q. Had you passed the buoys at that time?

A. Just about.

Q. I am speaking of this red buoy and this black buoy which mark the entrance to the Schuylkill?

A. Yes, sir.

Q. Where were you standing on the "Churchman?"

A. On the forward deck.

Q. When you say that you were three or four lengths from the "Taurus" when those third whistles were exchanged, how far were you from the lighters that the "Taurus" was towing at that time?

A. I guess that the ship was about four hundred feet long and we were about three lengths of her away then.

Q. After the third one-blast whistle signals were given and exchanged did you still watch the "Taurus" and her tow?

A. Yes, sir; I was standing right there looking at them all of the time.

Q. What, if anything, did you see the "Taurus" do after that?

A. As we were going along there I saw the "Taurus" sheer off to starboard.

Q. How did that bring her with respect to the course of the "Gulftrade?"

A. That brought her right across our bow.

Q. Did the "Taurus" remain in your sight after that sheer or was there a time when you could not see her?

A. We were right under the port bow, and I could see her.

Q. She remained in your sight?

A. Yes, sir; I could see her most of the time.

Q. Was there any time when she was not visible?

A. About the time she whistled she was more to the starboard of the ship.

Q. Which ship?

A. The "Gulftrade."

Q. Did you notice, and can you tell us, how the "Gulftrade" was proceeding up that channel with respect to the ranges?

A. After we were entered we were a little to the eastward of the ranges.

Q Could you see that?

A. Yes, sir.

Q. Have you been in that locality a great many times before this occasion?

A. I suppose that I make an average about half dozen times most every day.

Q. Could you see the ranges as you were standing up there on the "Churchman's" bow?

A. Yes, sir; I could.

Q. How was the "Taurus" navigating there with respect to the ranges; was she on them, or to the eastward or to the westward of the ranges?

A. She was hauling all of the time to the starboard which would bring her on the eastward side of the ranges.

Q. Was that after the third one-whistle signal was exchanged between the two tows?

A. Yes, sir.

Q. Did you see the collision between the "Gulftrade" and this scow?

A. Yes, sir; I did.

Q. Just before that collision what order, if any, was given to the man in charge of the navigation of the "Churchman?"

A. To go full speed ahead.

Q. That signal came from where?

A. The bridge of the ship.

Q. Did you hear the man in your pilot house give any signal in obedience to the one that he received from the bridge of the "Gulftrade?"

A. Yes, sir.

Q. What was that signal?

A. One bell and a jingle.

Q. What does that mean?

A. Full speed ahead.

Q. That signal was given by the man in the pilot house of the "Churchman" to the engineer?

A. Yes, sir.

Q. And that was in obedience to an order which came from the bridge of the "Gulftrade?"

A. Yes, sir.

Q. Do you know whether that order was obeyed or not?

A. Yes, sir; I know that it was obeyed just as soon as it was received in the engine room.

Q. Was that order given before the collision or after the collision or at the time of the collision?

A. It was before the collision.

Q. Was it before or after the third signal of one blast was given and answered?

A. Just after that was given.

Q. So that it was the last one-blast signal was given but before the collision?

A. Yes, sir; between the two.

Q. About how long was it after the "Taurus" had answered that third one-blast signal was it that the order to go full speed ahead was given?

A. As soon as possible because she was coming over on us all of the time.

Q. When that was seen to be the case the order to go full speed on your engines was given?

A. Yes, sir.

Q. Was there any other given?

A. Yes, sir.

Q. What was that?

A. Hard a port.

Q. Did you hear that order given?

A. Yes, sir; I did.

Q. Do you know whether that order to hard a port the wheel was obeyed?

Mr. Brown: Objected to; this man was not in the pilot house steering.

A. I felt quite certain it was.

Q. Of course you were not in a position to see just what the man in your pilot house did with the wheel?

A. No, sir; of course I could not tell that.

Q. Not being in the pilot house you were not able to say just which way he rolled it, that is from looking at him?

A. No, sir.

Q. On deck you were watching what was going on?

A. Yes, sir.

Q. What did you see of the collision?

A. As we were proceeding up there we struck the stern barge of the "Taurus," that is the "Gulftrade" hit it, with her port bow; then we had to let go just before we struck and we backed away, and then we came up on the starboard side of the "Gulftrade" and then we saw this sunken scow was bottom up on the starboard side of the "Gulftrade." That is about all that I know.

Q. Then what did you do?

A. Then we went away and helped the steamer to her dock.

Q. That is the "Gulftrade?"

A. Yes, sir; to her pier.

Q. Why did you have to back up?

A. So as to keep from hitting them ourselves.

Q. You mean those barges?

A. Yes, sir.

Q. Those barges that the "Taurus" was towing?

A. Yes, sir.

Q. How many did she have in her tow altogether?

A. I think that there were four of them, but I am not sure of the exact number.

Q. There were at least four do you mean?

A. Yes, sir; and I think that was all she had.

Q. And you backed out so as to keep from being hit by the sunken scow?

A. Yes, sir.

Q. Did you see the sunken scow?

A. I saw it once.

Q. Where was it?

A. The one that was not capsized was on the port and the one turned over was on the starboard side.

Q. If the "Taurus" had held her course and had not made this change to her starboard, that you have told us about, how close would the "Gulftrade" and your tug and the "Triton" have passed to the "Taurus" and her tow?

A. I should say eighty feet anyway; do you mean the width that would have been between the two tows in passing if the "Taurus" had not changed to starboard?

Q. Yes, that is what I mean?

A. I think that there would have been eighty feet between us then.

Q. That is between the "Taurus" and her tow of scows and the "Gulftrade" and the "Triton" and "Churchman?"

A. Yes, sir; I guess that the "Gulftrade" is not more than thirty feet wide.

Q. Is there any doubt in your mind that the two

town would have passed each other in safety if the "Tacoma" had not made that change of course to her starboard that you have told us about?

A. Yes, sir; I think that they would have passed safely if the "Tacoma" had not made that change of course.

Q. And you are sure it was the "Tacoma" that made the change of course?

A. Yes, sir; I am.

Q. Did the "Gulfwinds" make any change either to port or starboard?

A. No, sir.

Q. Did she make any slower to port?

A. No, sir.

Q. This slower that you have said the "Tacoma" made; was that a change towards the course the "Gulfwinds" was on or away from that course?

A. It was a slower made by the "Tacoma" over towards the "Gulfwinds."

Q. When you got in between these two boys were you directly between them, or do you know how close to the black buoy or lower buoy your tug passed?

A. Well, it was quite a distance because we were pretty near over to the red buoy. I do not know just how wide it is exactly at that place.

Q. When this collision occurred was the "Gulfwinds" and her tugs inside of the red and black buoys?

A. Yes, sir.

Q. About how far had they gotten up the river, the Schuylkill River, inside of the buoys?

A. About four or five or six lengths of the ship I should say at that time.

Q. Which ship do you mean?

A. I mean the "Gulfwinds."

By Mr. Swanson:

Q. You mean up the Kidwell from the house?
A. Yes, sir.

By Mr. Lamp:

Q. What kind of a day was it?
A. It was a clear day.
Q. How was the tide?
A. I think that it was flood tide.
Q. Did you see any men in the water with a life ring when the "Cherokee" came around and backed away?
A. I saw a man in the water but I could not say about the life ring.
Q. Did your people pick him up?
A. Yes, sir; that was the man who jumped off the "Gulfwind."
Q. Did you see anybody from this supposed fighter in the water?
A. Yes, sir.
Q. Where did you see him?
A. He was way over to the starboard of the "Gulf-wind," pretty well astern.
Q. That was the man who was drowned?
A. Yes, sir.
Q. You are still on the "Cherokee?"
A. Yes, sir; I am.

Cross-examination.

By Mr. Brown:

Q. What is your position on the "Cherokee" now?
A. Deck hand.

XQ. The same position you had at the time of this collision?

A. Yes, sir.

XQ. How old are you?

A. Twenty-seven.

XQ. Did you stay on the forward deck of the "Churchman" all of the way up the river?

A. Yes, sir.

XQ. From Fort Mifflin?

A. Yes, sir; after we made fast.

XQ. What were you doing there?

A. What we call a lookout, handling lines.

XQ. Was there any one there with you?

A. Not on the forward deck.

XQ. You were there all by yourself?

A. Yes, sir.

XQ. Were you there by yourself from the time that you left Fort Mifflin until after the collision?

A. Yes, sir; I was right there all of the time until the collision was over.

XQ. How far aft of the stem of the "Gulftrade" would you say that the "Churchman" was?

A. I should judge that it was somewhere in the neighborhood of twenty or twenty-five feet.

XQ. Were you aft of the bluff of the bow?

A. Yes, sir.

XQ. About how far above your deck was the deck of the "Gulftrade" would you say?

A. Our lower deck?

XQ. Yes.

A. I suppose that it was twenty feet to the top of her rail.

XQ. How high above that was the bridge?

A. Her bridge is fifty or sixty feet above her rail, I guess.

XQ. So that the distance from where you were

standing to the bridge of the steamer was about seventy feet?

A. Yes, sir; I should say that would be about right; not exactly, perhaps.

XQ. Were you forward of the bridge or alongside?

A. I was forward.

XQ. Who were on the bridge?

A. Harry Quillen and Herman Marvell.

XQ. Masters of the "Triton" and "Churchman?"

A. Yes, sir.

XQ. How soon after you left Fort Mifflin was that first whistle signal blown?

A. I think that we were not very far above Fort Mifflin then.

XQ. Can you give us any better estimate than that?

A. Well, it might have been half way from Fort Mifflin to the mouth of the Schuylkill.

XQ. How far is it from Fort Mifflin to the mouth of the Schuylkill, about?

A. Three-quarters of a mile.

XQ. So that the first whistle was blown after you were about half a mile from where you started?

A. Yes, sir; something like that.

XQ. Where was the tug "Taurus" at that time?

A. She was just about entering the Schuylkill then.

XQ. Was she outside, inside or abreast of the red and black buoys then?

A. I can't say whether she had got past them or not.

XQ. You received an answer from the "Taurus?"

A. Yes, sir.

XQ. Was there any change of course made by the "Gulftrade" at that time?

A. No, sir.

XQ. She continued her course up the channel?

A. Yes, sir.

XQ. How long after the first exchange of signals was the second exchange made?

A. It was not long.

XQ. About how long?

A. Not more than five minutes anyway.

XQ. Where was the "Gulftrade" at the time the second whistles were exchanged?

A. She was not quite to the entrance to the Schuylkill at that time.

XQ. Could you say what time the "Gulftrade" got on the ranges, if she did get on the ranges?

A. She was on the ranges, at the entrance to the Schuylkill, after the second blast of the whistle.

XQ. What are those ranges?

A. They are, perhaps I don't know just what to call them, but they are two red lights set up over the east shore at the mouth of the Schuylkill.

XQ. They show up pretty well in the daytime, do they?

A. Yes, sir.

XQ. See them well?

A. Yes, sir; show white then.

XQ. When the "Gulftrade" lined up on the ranges between the two buoys, had she given the second one-blast signal on her whistle?

A. Yes, sir; she got on the ranges after the second signal on her whistle.

XQ. The whistle was before that, you think?

A. Yes, sir.

XQ. How long after that did she blow the third signal?

A. The buoys were about amidships.

XQ. You were about abreast of the buoys then?

A. Yes, sir; I should say so.

XQ. Where was the "Taurus" then?

A. She was in the Schuylkill.

XQ. How far ahead of the "Gulftrade" would you say that the last two barges were then?

A. Do you mean at the time that the third whistle was blown by the ship?

XQ. Yes.

A. I should say that they were about eight hundred or a thousand feet ahead then.

XQ. How far would you say that the "Gulftrade" was away from the red buoy at the time that the third whistles were exchanged by the "Taurus" and the steamer?

A. Well I should say that she was not any more than past it then.

XQ. How far was the red buoy from the starboard side of the "Gulftrade" at the time that the third whistle was blown?

A. I should say not more than twenty-five feet as far as I could see.

XQ. When did the bow of the "Gulftrade" shut that buoy out from your view?

A. As soon as we entered the Schuylkill that was on the starboard.

XQ. At the time that the last whistle signal was given could you see that buoy?

A. No, sir; not at the time that the last whistle was blown I couldn't.

XQ. And you were then on the ranges?

A. Yes, sir.

XQ. At that time how far to the port of the side of the "Gulftrade" would you say the tow of the "Taurus" was; I know that she was ahead but how far to the port?

A. She was not so very far to port. We never had more than space to clear her at the time and she

was hauling to starboard all of the time and we were gaining on her.

XQ. I understood you to say that it was not until the last whistles were exchanged that you noticed any change?

A. That took place after we had entered the mouth of the Schuylkill.

XQ. How far to the port of the "Gulftrade" would you say the course of the "Taurus" was?

A. It was never very much.

XQ. Could you estimate the distance?

A. I should say that it was about twenty-five feet; that would be about it.

XQ. Do you mean that was at the time that the last whistles were exchanged?

A. Yes, sir.

XQ. When you say it was never very much you mean at the time that the last whistles were exchanged?

A. Yes, sir; and we were in the mouth of the Schuylkill and gaining on her.

XQ. At that time the courses had not started to converge?

A. It appeared to me that she was coming towards us all of the time.

XQ. From what time?

A. From the last whistle.

XQ. Prior to that time she had not seemed to come over towards you?

A. No, sir; because the ship was blowing for her to keep off more.

XQ. But before the last whistle signal the courses had not seemed to come together?

A. No, sir.

XQ. And at that time, before they seemed to come together, there was a space of twenty-five feet dif-

ference between the courses of the "Gulftrade" and the "Taurus?"

A. Of course she was ahead of us and it was hard to judge just the distance in the positions the vessels were in then.

XQ. Is that your best estimate of it?

A. Yes, sir; that is about as near as I could come to it, I guess.

XQ. Did you notice how far the "Taurus" and her tow were from the bank on the port side?

A. I should judge that she was close to two hundred feet off from the bank.

XQ. Did you notice the marks along the bank as you went along there?

A. No, sir.

XQ. Are there any marks there?

A. There are bushes and rocks and stuff like that way over there I know.

XQ. How long was it, after you say the third one-whistle signals were exchanged, that you saw this sheer of the tug "Taurus?"

A. That was about the time because she was coming towards us all of the time.

XQ. Before them?

A. About the time.

XQ. What was this change with respect to the "Gulftrade" that you noticed on the part of the "Taurus?"

A. I noticed that she was coming towards us.

XQ. You noticed that the two vessels were coming together, did you?

A. I noticed that she was crossing our course and getting nearer to us.

XQ. Did you know what the course of the "Gulftrade" was at the time that you noticed that?

A. I did not know exactly what her course was by

the compass but she was a little to the eastward of the ranges.

XQ. When did she get to the eastward?

A. She was bearing to the eastward all of the time after she passed the buoys at the mouth of the Schuylkill.

XQ. You came in on the ranges?

A. Yes, sir.

XQ. You were watching the ranges?

A. I could not say that I was exactly watching them but I could look up there and see them.

XQ. You could see past the bluff of the bow?

A. Yes, sir.

XQ. And could see the ranges?

A. Yes, sir.

XQ. Could you see the ranges open to the eastward?

A. They would not have to be open to the eastward for her to be to the eastward a little because we were well on the port bow and they would be open on her port side and we have them on.

XQ. Did you notice the position of the steamer with respect to the ranges after that? After the vessels got closer?

A. I did not notice the ranges after that.

XQ. Why not?

A. Because we were getting closer to that tug all of the time; getting closer to the tug and her tow.

XQ. Which barge in the tow of the "Taurus" did the "Gulftrade" strike?

A. The starboard barge astern.

XQ. Do you know whether that is the barge that went around on the starboard side of the steamer?

A. Yes, sir; that is the barge which went around on the starboard side of the "Gulftrade."

XQ. And that is the one you saw hit?

A. Yes, sir.

XQ. What happened to the barge on the port side of the last tier of barges in tow of the "Taurus?"

A. She still stayed afloat and we had to get away from there before the "Gulftrade" struck that other stern barge.

XQ. What did your tug do?

A. We backed around to the stern.

XQ. Of the "Gulftrade?"

A. Yes, sir.

XQ. What were you doing just before the collision happened?

A. I was standing there ready to let go the lines.

XQ. When did you let go?

A. Just before the steamer hit the scow, I would say.

XQ. Then what did you do?

A. Just stood there and looked.

XQ. After you got your lines off?

A. Yes, sir.

XQ. Just prior to the collision where was the "Taurus" as far as you could see?

A. She was pretty near ahead.

XQ. Ahead of what?

A. Of the "Gulftrade."

XQ. And she was proceeding ahead, the "Taurus?"

A. Yes, sir.

XQ. Were her barges following her?

A. Yes, sir; they seemed to be.

XQ. You do not know anything about the orders given on the bridge of the "Gulftrade?"

A. Not as far as the steamer was concerned.

XQ. Nor so far as the ship's course was concerned do you know anything?

A. No, sir.

XQ. How wide would you say that the channel was right there at the entrance?

A. I really do not know.

XQ. Between the two buoys?

A. I should judge that it is from six to seven hundred feet between the two buoys.

XQ. How fast, in your opinion, was the "Gulftrade" going?

A. She was not going very fast; I am not much of a judge of speed though.

XQ. She was overtaking the "Taurus" and her barges though pretty rapidly?

A. Not so very rapidly.

XQ. Still you said, did you not, that the "Taurus" was entering the mouth of the Schuylkill when you were a half mile away?

A. Yes, sir.

XQ. And the collision occurred how far inside of the buoys?

A. About four or five lengths of the "Gulftrade."

XQ. Inside the buoys?

A. Yes, sir.

XQ. So that while the "Taurus" was going that distance you came that distance plus half a mile?

A. About that.

XQ. Did this sheer about which you have been talking seem to be a sudden or a gradual sheer?

A. I guess that it was more or less of a gradual sheer; I should it was a gradual swing.

XQ. Did it seem to be a gradual sheer to you as you were looking forward?

A. I should say so.

XQ. It was not what you would call a sudden sheer?

A. No, sir; it was not a sudden sheer, but she seemer to be getting closer all of the time. She was ahead of us, but getting closer to us too.

XQ. She did not sheer right off?
A. I would not say so.

Cross-examination.

By Mr. Dawson:

XQ. Do you hold a license?
A. Yes, sir; at the present time I do.
XQ. What license do you hold now?
A. First-class pilot for three hundred tons.
XQ. You seem to have watched the approach of the vessels before the collision pretty carefully. You were where you could see and were just standing there on the forward part of your tug, the "F. A. Churchman?"
A. Yes, sir.
XQ. And she was made fast alongside of the port bow of the steamer "Gulftrade?"
A. Yes, sir.
XQ. Am I correct in understanding that you could tell from your observation of the ranges and the buoys as you approached them on entering the mouth of the Schuylkill, that the "Gulftrade" was passing up on the eastern side of the channel?
A. You did not have to be on the eastern side to pass close to the red buoy; of course, you are close in on the ranges there.
XQ. You could tell from the position of the "Gulftrade" below the entrance that she was passing very close to the red buoy?
A. Yes, sir; she did not pass very far away from that red buoy going in there.
XQ. Your best estimate, before the red buoy was closed out to your view is that you were passing it about twenty-five feet away; is that correct?

A. Yes, sir; something like that.

XQ. You have said that there were three separate and distinct signals of one blast given by the "Gulftrade" to the "Taurus?"

A. Yes, sir.

XQ. And the "Taurus" answered each one?

A. Yes, sir.

XQ. With one blast?

A. Yes, sir.

XQ. On each of the three occasions?

A. Yes, sir; that is right.

XQ. Did the "Taurus" answer promptly on each occasion?

A. Yes, sir; she did.

XQ. And with one blast on each occasion?

A. Yes, sir; that is right.

XQ. Am I correct in understanding your testimony to be that as the "Gulftrade" gradually overtook the "Taurus" and her tow, but before the "Taurus" started to sheer over to her starboard, the vessels were in position to have cleared by about eighty feet; is that correct?

A. Yes, sir; something like that.

XQ. And after that the "Taurus" began to change her own and the course of her barges by a gradual and persistent change across the course of the "Gulftrade?"

A. Yes, sir.

XQ. And contrary to the agreed course?

A. Yes, sir.

XQ. And that was going across the bow of the "Gulftrade" and pulling her barges across the bow of the "Gulftrade?"

A. Yes, sir.

XQ. And from your observation of the "Gulftrade" from the time that the third one whistle

signal was blown by her and answered by the "Taurus, the "Taurus" began to sheer or change her course to starboard?

A. Yes, sir.

XQ. And from your observation from that time on the course of the "Taurus" and her tow was always working over to starboard; is that correct?

A. Yes, sir.

XQ. When you said, in answer to a question by Mr. Brown a few moments ago, that the "Taurus" was ahead and proceeding ahead, you meant that she was proceeding ahead and also across your course?

A. Yes, sir.

XQ. That is she was still going ahead but also swinging to starboard at the same time?

A. Yes, sir.

XQ. You started to say something about there being room for the "Taurus" to go over the other way, but you were interrupted before you had answered fully; in your opinion how far could the "Taurus" have hauled to port if she had been minded to do so?

A. I should say that she could have gone over there fifty feet anyway.

XQ. At least fifty feet.

A. Yes, sir.

XQ. But instead of hauling to port she hauled to starboard?

A. Yes, sir.

XQ. After your tug backed clear, just before the collision, in order to avoid being hit, I understand that you passed astern of the "Gulftrade?"

A. Yes, sir.

XQ. And when you got astern of the "Gulftrade" you could see the overturned barge on the starboard side of the "Gulftrade," could you?

A. Yes, sir.

XQ. Where was that overturned barge with reference to the "Gulftrade," up or down the river?

A. That stranded barge was about alongside of the "Gulftrade" then.

XQ. How near to it?

A. The steamer was not past it.

XQ. Was the barge pretty close by the "Gulftrade?"

A. Yes, sir.

XQ. The orders that you have testified to were given from the bridge of the "Gulftrade?"

A. Yes, sir; they were.

XQ. By whom there?

A. Mr. Quillen.

XQ. The orders that you heard given there were given by Captain Quillen?

A. Yes, sir.

Re-cross examination.

By Mr. Brown:

RXQ. You testified before the United States Local Steamboat Inspectors, did you not?

A. Yes, sir.

RXQ. Do you remember your testimony on that occasion?

A. Part of it anyway.

RXQ. Do you remember Captain Sargent asking you this question: "Q. From your observation could you see the Schuylkill range lights as you went in?" Do you remember that?

Mr. Long: Objected to as not proper re-cross examination.

A. I don't remember; I may have been asked that question.

RXQ. You don't recollect that?

A. No, sir.

RXQ. Do you recollect your answer?

A. No, sir.

RXQ. Do you remember saying in answer: "A. I did not pay much attention?" Do you remember that answer?

A. No, sir; I don't remember telling him that.

Mr. Long: I want to suggest to Mr. Brown that it hardly seems fair to pick out a question and answer in the middle of such an examination and ask him if he remembers it without letting him read what went before.

Mr. Brown: The witness can look at his entire examination. I hand it to him.

Mr. Long: I think that he should be allowed to read the entire examination because it is hardly fair to pick out certain questions and answers without his knowing what it is about.

RXQ. Now having read as much of it as you want to read; do you remember that question and answer?

A. I see that it is down there, but I do not remember his asking the question.

RXQ. Do you remember giving that answer to the question?

A. No, sir; I don't remember that.

RXQ. This testimony was taken a few days after the collision, October 8, 1923?

A. About then.

RXQ. Do you remember any other part of the examination?

A. No, sir.

RXQ. You do not remember any part of the examination?

A. Only some of the questions that are there and the answers; of course, I must have answered them according to this paper.

RXQ. You would not say that you did not make that answer?

A. No, sir.

Mr. Long: I have the following witnesses from the tug "Triton" whom I have intended to produce, but I am informed that they are no longer in the employ of that tug; I have taken their statements and will be glad to submit them to other counsel present.

Ollie Muniford, deck-hand on the "Triton," whose statement shows that he knows nothing about the collision.

Edmund King, deck-hand on the "Triton," whose statement is to the same effect.

And the following witnesses on the "Churchman:"

Frank P. Timmons, fireman, who went off watch at twelve o'clock noon and who knows nothing material about the collision.

Frank P. Robinson, fireman on the "Churchman," who held a license as chief engineer, and whose statement shows that he went below when the "Churchman" was made fast to the "Gulftrade" on the day of the collision and who did not come out until after the collision.

These witnesses I do not intend to call unless counsel criticizes such failure to call them. I have the statements of these men taken right after the collision and I submit them to opposing counsel.

(Mr. Brown and Mr. Dawson accept Mr. Long's statement that these witnesses are not material witnesses and agree not to to make any comments on the failure to call them and agree that they know nothing material to the facts of the collision.)

DENNIS A. MOORE, having been duly sworn according to law was examined and testified as follows:

By Mr. Long:

Q. How old are you?
A. Forty-nine.
Q. You live at 5413 Pennsgrove Street, Philadelphia?
A. Yes, sir.
Q. What license do you hold?
A. First-class pilot's license.
Q. How long have you held that license?
A. Six years.
Q. During all of that time you have been on what tug?
A. The "F. A. Churchman."
Q. You follow the water?
A. Yes, sir; ever since I was of age.
Q. How long have you been going on tugs in the Delaware River?
A. Oh, I have been connected with tugs on this river for twenty-three years now.
Q. Were you mate of the "Churchman" on October 1, 1923, the day of the collision between the "Gulftrade" and the Charles Warner Company's scow?
A. Yes, sir; I was.

Q. Who was the master of your tug?

A. Captain Marvill.

Q. Do you remember being made fast alongside of the steamer "Gulftrade" that day?

A. Yes, sir; I do.

Q. Did Captain Marvill remain on your tug after that or what did he do?

A. No, sir; he went to the bridge of the "Gulftrade?"

Q. Did he remain there?

A. Yes, sir.

Q. Down to the collision?

A. Until it was over.

Q. Did you see any of the officers of the "Gulftrade" on her bridge?

A. There is most always a mate there and sometimes the captain is there.

Q. How was the weather that afternoon?

A. It seemed to be good.

Q. How was the tide?

A. The tide was flood.

Q. The "Churchman" was made fast to the "Gulftrade" on the steamer's port bow?

A. Yes, sir; she was.

Q. Where was the steamer "Gulftrade" lying when you first saw her?

A. She was opposite Fort Mifflin.

Q. Where was the "Taurus" then?

A. She was just coming into the Schuylkill.

Q. Did you see the four lighters that the tug "Taurus" was towing up there?

A. Yes, sir.

Q. How were they geared up?

A. In two tiers.

Q. Two ahead and two astern of that pair?

A. Yes, sir.

Q. All astern of the "Taurus?"

A. Yes, sir.

Q. Did you hear any signal blown by the "Gulftrade" to the "Taurus?"

A. Yes, sir.

Q. What was the first you heard?

A. One blast by the "Gulftrade."

Q. Where was the "Gulftrade" then?

A. She was just above Fort Mifflin dock and we were getting round from there to the mouth of the Schuylkill River.

Q. Was that first signal of the "Gulftrade" answered by the "Taurus?"

A. Yes, sir; it was.

Q. With what?

A. One blast.

Q. Did the "Taurus" answer right away?

A. Yes, sir.

Q. How far apart were the two tows at that time?

A. I should judge that they were a quarter of a mile apart then anyway.

Q. Did you hear the "Gulftrade" blow a second signal to the "Taurus?"

A. Yes, sir.

Q. What signal was that?

A. The same as the fire one, one blast.

Q. Was that second signal answered by the "Taurus?"

A. Yes, sir.

Q. Right away?

A. Yes, sir.

Q. With what.

A. Also with one blast.

Q. Was the "Taurus" inside the entrance to the Schuylkill at that time?

A. Yes, sir.

Q. Was the "Gulftrade" inside at that time?

A. No, sir; she was right at the red buoy, just getting ready to enter there.

Q. She had not entered the mouth of the Schuylkill, but was ready to enter?

A. Yes, sir.

Q. Did she pass between the red and black buoys in entering the mouth of the Schuylkill?

A. Yes, sir; she did.

Q. As you came up the Delaware with the "Gulftrade" she had to swing in order to make that entrance?

A. Yes, sir.

Q. How did the "Gulftrade" enter in the mouth of the Schuylkill?

A. She passed between the two buoys, heading right straight up. There are ranges there marking the channel for deep draft vessels such as she was.

Q. How wide would you say the channel was there for vessels drawing twenty-seven feet of water?

A. I should judge that it was two hundred or two hundred and fifty feet wide.

Q. Do you know the distance between the two buoys?

A. No, sir; I don't.

Q. There are the ranges which you follow after you get in there you said?

A. Yes, sir; there are ranges for deep draft vessels to go on in there.

Q. What are those ranges?

A. Two big white boxes with red lights in them.

Q. What shore are they on; starboard or port hand?

A. Starboard going in.

Q. Do you remember any other signals blown by the "Gulftrade" after the two you have told us about?

A. No, sir; I don't recollect any others.

Q. You only heard the two?

A. That is all I recollect.

Q. Do you know how close the "Gulftrade" passed to that red buoy as you entered the Schuylkill?

A. She was very close to it. I could not tell you the distance we passed from it, but I guess it was not more than a width or width and a half.

Q. Width of what?

A. Width of the ship. You go very close to that buoy as you enter there with such a ship. I was on the port side and could not tell just exactly the distance.

Q. You were in the pilot house of the tug "Churchman?"

A. Yes, sir.

Q. In charge?

A. Yes, sir.

Q. You were there to get signals from your captain on the bridge of the "Gulftrade?"

A. Yes, sir.

Q. Did you pay particular attention to what was going on ahead of your tug or not?

A. It was my duty to pay attention to the man on the bridge and that is where I looked most of the time. I did keep my eye somewhat on what was going on ahead though.

Q. Did you get any order with respect to your tug?

A. Yes, sir.

Q. Who gave that order?

A. Marvill.

Q. From the bridge of the "Gulftrade?"

A. Yes, sir.

Q. What was that order?

A. Come ahead full speed and hard a port.
Q. Was that order obeyed?
A. Yes, sir, and sheered the vessel to starboard.
Q. Who worked the wheel?
A. I did; I was in our pilot house.
Q. Did you ring the bell to your engine room?
A. Yes, sir; I did.
Q. Was that obeyed by your engineer?
A. It was, right away.
Q. Who was your engineer then?
A. Mr. Rickard, the same gentleman who was here in this room a few minutes ago.
Q. Do you know why that order was given?
A. Yes, sir.
Q. Why?

Mr. Brown: Objected to.

A. To sheer the "Gulftrade" over to starboard.
Q. Why was it necessary to sheer the "Gulftrade" to starboard at that time?
A. To try and keep clear of the "Taurus" and her tow.
Q. What was the "Taurus" doing, if anything, before that order was given?
A. She was hauling to starboard.
Q. Which way?
A. Across the bow of the "Gulftrade."
Q. Did you see that yourself?
A. Yes, sir; of course, I did.
Q. Was that a gradual change or a sheer?
A. Just a change; the way she was changing.
Q. Could you see that yourself?
A. Yes, sir.
Q. How far over did the "Taurus" haul?
A. The last I seen of her and her tow she was out of my sight entirely.

Q. Did the "Taurus" remain all of the time in your sight or did you lose sight of her?

A. No. sir; not when she got off to starboard and she then hid herself from my pilot house. We were on the port bow of the steamer and I could not see her then.

Q. Did you see the collision?

A. No, sir; not when the steamer struck the lighter; I did not see that.

Q. Assuming that the "Taurus" and her tow had proceeded on the course that they were on before she hauled over to starboard and the "Gulftrade" and her two tugs had remained on their course, as I understand you to say they did, how far would you have passed from the "Taurus?"

A. We would have passed them at least one hundred and fifty feet away if the "Taurus" had not made that change across the bow of the steamer.

Q. How close was the "Taurus" to the beach on her port-hand side coming in there?

A. The "Taurus" must have been at least a hundred and fifty feet if not more away from that beach.

Q. Have you been around that beach with your tug?

A. Yes, sir.

Q. What does your tug draw?

A. About eight feet.

Q. Do you know the tug "Taurus?"

A. Yes, sir.

Q. How much does she draw?

A. About seven feet.

Q. How close would you say that she could go to that beach with her tow?

A. To that beach; I suppose that she could go to within fifteen or twenty feet.

Q. Have you been in there with a tugboat very close to that beach?

A. Yes, sir; very close.

Q. Were there any other vessels in that vicinity which interfered with the navigation of those boats?

A. None at all.

Q. Did you get any order from Captain Marvill after you got the order of full speed ahead and hard a port?

A. Yes, sir; we got the order to go astern.

Q. Why was that order given if you know?

A. That was given, I guess, so that we would get out of the way and not hit the scow; we had orders to go back and get out of the way of the scows.

Mr. Brown: Objected to.

Q. Where were those scows then?

A. They were right up close to my bow then.

Q. How many were there?

A. Three there.

Q. Did you obey that order?

A. Yes, sir.

Q. Where did the "Churchman" go?

A. We backed away and they were all safe and then we went around the stern of the "Gulftrade."

Q. And got on her starboard side?

A. Yes, sir; we did.

Q. Did you see any lighter after you got around there on the starboard side of the steamer?

A. Yes, sir; after I got around there I was nearly on top of it.

Q. Did you see any man in swimming in the water?

A. No, sir.

Q. Did you see any man from the steamer with a life ring?

A. Yes, sir.

Q. Where was he?

A. A little ways from the ship in there.

Q. Did you pick him up?

A. Yes, sir.

Q. You did not see the man from the lighter in there?

A. No, sir; not the man who was drowned.

Q. How far inside of the red and black buoys was the "Gulftrade" and the "Triton" and the "Churchman" when you got the order to hard a port and full speed ahead?

A. Maybe five hundred feet.

Q. You mean up the Schuylkill?

A. Yes, sir.

Cross-examination.

By Mr. Brown:

XQ. Captain, as you came into the mouth of the Schuylkill did you notice the red and black buoys?

A. No, sir; I didn't see the red buoy but the black buoy I could see. The other buoy was hid from me.

XQ. Did you notice whether or not the "Gulftrade" was on the ranges?

A. Yes, sir; she was on the ranges.

XQ. Did you keep watching the ranges or not, or did you look at the bridge?

A. No, sir; I looked at the bridge.

XQ. Did you notice the ranges after you entered until after the collision had occurred?

A. No, sir; that was not my duty then; I kept my eyes on the bridge of the steamer.

XQ. You paid no attention to the ranges after that?

A. No, sir; I couldn't look ahead and aft too.

XQ. At the time that the second one-blast signal was blown by the "Gulftrade" you were about opposite the black buoy?

A. Yes, sir.

XQ. And thus were about ready to enter the Schuylkill; is that correct?

A. Yes, sir; we were about ready to enter then.

XQ. Had you entered?

A. No, sir; but we were getting ready to enter then.

XQ. What do you mean by getting ready to enter?

A. We were just about ready to come in there.

XQ. Where was the black buoy with respect to the "Gulftrade" when the second whistle signals were exchanged?

A. She was just about abreast of the black buoy when that signal was blown.

XQ. And at that time she was on the ranges?

A. Yes, sir.

XQ. And you did not notice the ranges after that?

A. No, sir; I didn't.

XQ. At that time where were the barges that were in tow of the tug "Taurus?"

A. They were up ahead.

XQ. You did not notice their exact position?

A. No, sir; not then; when they got closer to us I noticed where they were.

XQ. You were paying attention to the bridge?

A. Yes, sir.

XQ. Could you tell how far from the shore they were?

A. They were in the neighborhood of two hundred feet from that jetty.

XQ. At that time?

A. Yes, sir.

XQ. How far would you say that they were from the shore at that time?

A. I should say that would make it in the vicinity of two hundred and fifty feet.

XQ. Do you know how far it is from the shore to the range line; or don't you know that?

A. Not exactly.

XQ. Would you say that you were two hundred or two hundred and fifty or three hundred feet from the western bank at that time; or don't you know?

A. I should say that it would be about two hundred feet; about that I mean.

XQ. So that at that time you were directly astern of the "Taurus" and her tow; following her up the river?

A. No, sir.

XQ. You did not notice any change of course on the part of the "Taurus," did you?

A. Yes, sir; they hauled to the starboard.

XQ. How do you know that?

A. I could see it.

XQ. See it how?

A. See it by the land.

XQ. What land?

A. The land over there and I could see on the ranges.

XQ. But you didn't look at the ranges?

A. Not all of the time.

XQ. But you did not look at them at all?

A. When they got off I did.

XQ. The "Taurus" and her tow were ahead of you?

A. Yes, sir; but I could see that she was hauling. I can tell when I am on a boat when they are hauling.

XQ. Which boat?

A. The tugboat.

XQ. Do you mean she hauled?

A. Yes, sir; of course she did.

XQ. When you came in the Schuylkill your fleet was directly astern of the tug "Taurus" and her tow? You said that?

A. Yes, sir.

XQ. As a matter of fact were not the "Taurus" and her tow over on your port bow?

A. When we entered?

XQ. Yes?

A. No, sir; they were very near on a line up there when the "Gulftrade" entered there.

XQ. How far ahead of the "Gulftrade" was the "Taurus" and her tow when you entered there?

A. Four or five hundred feet, maybe.

XQ. And at that time you say that you were directly astern of her?

A. Yes, sir.

XQ. You did not see the collision at all?

A. No, sir.

XQ. Did you not see a lighter struck?

A. No, sir.

XQ. You did not know which lighter was struck?

A. No, sir.

XQ. How long was it before the collision that you had lost sight of the "Taurus?"

A. Just a few minutes.

XQ. Did you hear any signals other than the two one-whistle signals that you have mentioned?

A. No, sir.

XQ. You said, I think, that if the two tows, that is the "Gulftrade" and her tugs, and the "Taurus" and her tow, had maintained their courses, that is the courses they were on when you entered the river, they would have passed a hundred and fifty feet from each other?

Mr. Long: Objected to. The witness said they would have passed if the "Taurus" had not hauled over to starboard.

XQ. When was it that the two fleets were in such a position that if they had maintained their respective courses they would have passed each other a hundred and fifty feet apart?

A. How far they were apart?

XQ. You testified that if the two tows had kept their courses they would have passed a hundred and fifty feet apart; that is that the "Gulftrade" would have passed 150 feet from the "Taurus" and her tow?

A. I said that.

XQ. Was that after the "Gulftrade" had entered the Schuylkill?

A. When she had entered.

XQ. That was when she was by the buoy?

A. Yes, sir.

XQ. And if the two fleets had maintained the courses they were on they would have passed 150 feet apart?

A. Yes, sir; all of that.

XQ. And maybe a little more?

A. I don't know as it would have been any more; 150 feet is a pretty good berth.

XQ. You lost sight of the "Taurus" and her tow before the collision?

A. Yes, sir; the "Taurus" hauled over.

XQ. They went clear out of your sight?

A. Yes, sir; I could not see her any more. I saw her crossing over but I couldn't see what happened.

XQ. Was the "Gulftrade" well over on the eastern bank when she came into the Schuylkill?

A. Yes, sir; over on the ranges.

XQ. After that did she work well over to the eastward?

A. I couldn't tell you that. I was watching the bridge after that.

XQ. You couldn't tell what course she was on or the position you were in?

A. No, sir.

Cross-examination.

By Mr. Dawson:

Mr. Brown: I desire it understood that Mr. Dawson's cross-examination of this witness is subject to the same objections that I have heretofore made.

XQ. You could see the "Taurus" and her tow all right as long as she held her course on your port bow?

A. Yes, sir.

XQ. But you lost sight of her when she hauled across your bow and the bow of the "Gulftrade?"

A. Yes, sir.

XQ. That change of course of the "Taurus" was what made you lose sight of her?

A. Yes, sir.

XQ. While she was ahead of you it was due to the fact that the "Taurus" and her tow started to haul across your bow that made you lose sight of her?

A. Yes, sir; that was it.

XQ. She got so far off to starboard that you could not see her any longer?

A. Yes, sir; that is right.

XQ. Could you see the stern barge?

A. Yes, sir.

XQ. That change of course that the "Taurus" made was to her starboard, was it?

A. Yes, sir; it was.

XQ. And, as I understand your testimony, when those two fleets were going up there with the "Taurus" off your port bow, if they had held the courses they were on at that time, you would have gone clear in passing by 150 feet?

A. Yes, sir.

XQ. You are sure as to that?

A. Yes, sir; I know we would have gone clear if she had held her course.

XQ. No question about that?

A. No, sir.

Re-cross examination.

By Mr. Brown:

RXQ. As a matter of fact, would you not have lost sight of the "Taurus" just as well if the "Gulftrade" had changed to port; that would have shut out the "Taurus" from your view?

A. No, sir; because she did not change to port.

RXQ. But it would have happened if the "Gulftrade" had changed to port?

A. Not if the "Taurus" had held her course.

RXQ. But if the "Gulftrade" had changed to port it would have had the same effect in shutting out the "Taurus?"

A. They were supposed to pass as they had agreed.

RXQ. You have testified that when you entered one fleet was ahead of the other?

A. Yes, sir.

RXQ. Now, if the "Gulftrade" had changed to

port that would have shut out the "Taurus" from you?

A. Yes, sir; but she didn't change.

RXQ. It would have had the same effect if she had?

A. Yes, sir.

RXQ. Before the collision you lost sight of the "Taurus" and her lighters?

A. All but the rear sand barge.

RXQ. I thought you testified that you lost sight of the whole fleet?

A. I couldn't lose sight of all of the lighters, I went to pick the people off them.

RXQ. You don't remember seeing the lighter struck?

RXQ. I don't remember the lighter.

RXQ. Did you see the lines part?

A. No, sir.

(Meeting adjourned.)

Depositions of witnesses on behalf of the Steam Tugs "Triton" and "Churchman," Independent Pier Company and Alfred C. Churchman, in Court on Friday, October 8th, 1926.

It is agreed that the costs of taking and transcribing the depositions may be a taxable disbursement.

PRESENT:

HONORABLE O. B. DICKINSON.

EVERETT H. BROWN, JR., ESQ., for the libellant..

HOWARD M. LONG, ESQ., for Tugs "Triton" and "Churchman," Independent Pier Company and Alfred C. Churchman.

CHAUNCEY I. CLARK, ESQ., and H. ALAN DAWSON, ESQ., for S. S. "Gulftrade" and Gulf Refining Co.

Mr. Long: I offer in evidence the depositions of Augustus Hudson (called Hindman); E. W. Helms, Esmer Hudson, J. F. Wilkins, and Asher G. Hearn for the tug "Triton;" and John Rickards, Ephraim Williams, Horace Derrickson and D. A. Moore for the tug "Churchman."

HERMAN E. MARVILL, having been duly sworn according to law was examined and testified as follows:

By Mr. Long:

Q. How old are you and where do you live?
A. I am 34, and live at 5035 Irving Street.
Q. Philadelphia?
A. Yes, sir.
Q. What is your occupation?
A. Marine pilot.
Q. Do you hold a license from the United States Local Inspectors?
A. Yes, sir.
Q. What is that license?
A. It is a first-class pilot's license for the Delaware Bay and River to Trenton; unlimited.
Q. How long have you followed the water?
A. Since 1910.
Q. As master of tugboats?
A. Part of that time.
Q. You have been working here in the Delaware River; that is, the port of Philadelphia?
A. Yes, sir.
Q. Are you master of any vessel at the present time?
A. Yes, sir; of the "F. A. Churchman."
Q. How long were you master of that vessel?
A. One week at the present time.
Q. Had you been master before?
A. Yes, sir; previously I had.
Q. How long have you been acting as master of tugboats?
A. Since 1917.
Q. Were you master of the "F. A. Churchman"

on October 1st, 1923, at the time that she was assisting the Steamer "Gulftrade" to go up the Schuylkill River from the Delaware?

A. Yes, sir; I was.

Q. Was there any other tug there along with you in doing that work?

A. Yes, sir; the "Triton."

Q. Where did you meet the "Gulftrade?"

A. Just below Fort Mifflin wharves; just above Hog Island Shipyard.

Q. In the Delaware River?

A. Yes, sir; in the Delaware.

Q. What kind of a day was it so far as the weather was concerned; was it a clear day or not?

A. Yes, sir; clear.

Q. Was there any wind?

A. Very light.

Q. How was the tide?

A. The tide was flood.

Q. Just go ahead and tell us what you did when you met the "Gulftrade" there that day?

A. We went to the port side of the "Gulftrade" and made the "Churchman" fast on the port bow of the steamer.

Q. Just where were you; forward or aft of the bluff of the steamer's bow?

A. Just a little aft of the bluff of the port bow of the steamer.

Q. Where did the "Triton" go?

A. She was made fast on the steamer's port quarter.

Q. How was the stern of the "Triton" with reference to the stern of the "Gulftrade"; was the tug's stern aft or forward of the stern or on even terms with the steamer's stern?

A. It was just a little forward.

Q. Did you stay on your tug?

A. No, sir; I went on the steamer.

Q. Whereabouts?

A. On the steamer's bridge.

Q. Did you find the captain of the "Triton" there?

A. No, sir; he came there right afterwards.

Q. Who, if anyone, was on the bridge of the steamer at the time that you got there?

A. There was the man at the wheel, two other men, and the master of the steamer.

Q. Who were those other two men?

A. That I don't know.

Q. Were they officers of the ship?

A. Yes, sir.

Q. Do you know where the first officer of the "Gulftrade" was then; whether he was there or not?

A. I don't know where he was.

Q. Where was the second officer?

A. That I don't know either.

Q. Did you notice whether there was an officer on the forecastle head of steamer after you got started up the river that day?

A. Yes, sir; there was an officer up there after we got under way.

Q. Do you know whether there was also an officer on her after part, as well?

A. That I don't know.

Q. Your tugs were going to assist this steamer up the Schuylkill River to her dock?

A. Yes, sir.

Q. Where was that dock?

A. At Girard Point where the company has its plant and docks there.

Q. On which side of the river?

A. On the east side.

Q. That is the Gulf Refining Company's plant, is it not?

A. Yes, sir.

Q. Do you know what the draft of the steamer "Gulftrade" was on this afternoon?

A. About 27 feet.

Q. Who gave the orders about steering the vessels; who gave the orders on the steamer?

A. The captain of the "Triton" gave all of the orders about the movements of the ship.

Q. What were you doing there?

A. I was there to assist him in any way I could; whatever was needed of me.

Q. Were you there to take his orders to the tug and pass them on?

A. Yes, sir; whatever orders he had to give.

Q. Who did you leave in charge of the "Churchman" at the time you went on the bridge of the steamer?

A. The mate was left in charge of her.

Q. Where was he?

A. In her pilot house.

Q. As you came up there were the engines of the tugs moving, or were you proceeding there under the power of the steamer alone?

A. The steamer was furnishing all of the power.

Q. The tug's engines were not working?

A. No, sir; neither of them.

Q. Only the engines of the steamer were in motion?

A. That is all.

Q. As you were coming up there did you see the tug "Taurus" and her tow?

A. Yes, sir; I saw her.

Q. Do you know where the "Taurus" and her tow were when you and the "Triton" made fast alongside of the "Gulftrade?"

A. She was about a quarter of a mile from the mouth of the Schuylkill when we first landed alongside of the steamer in the Delaware River.

Q. The "Taurus" and her tow were then in the Delaware River; that is, when you first saw them?

A. Yes, sir.

Q. Could you then tell where she was bound?

A. No, sir; I could not tell; I could only judge that she was bound up Schuylkill.

Q. As you were proceeding up there did the "Gulftrade" blow any whistles to the "Taurus?"

A. Yes, sir.

Q. What was it?

A. One whistle.

Q. Do you mean one blast on her whistle?

A. Yes, sir.

Q. Was that answered?

A. Yes, sir; "Taurus" answered it.

Q. With what?

A. With one blast of her whistle.

Q. Where was the "Taurus" then?

A. She had not then entered the mouth of the Schuylkill when she blew that first one-whistle signal.

Q. Where was the "Gulftrade" then?

A. We were just about Fort Mifflin piers.

Q. How far were you then from the mouth of the Schuylkill?

A. About half a mile.

Q. You proceeded on up with the steamer?

A. Yes, sir.

Q. Did you notice the "Taurus" pull into the Schuylkill?

A. Yes, sir.

Q. Were there any other signals blown by the "Gulftrade" to the "Taurus" after that first one-blast whistle?

A. Yes, sir; there was another one.

Q. What was that?

A. One blast.

Q. Was that answered by the "Taurus?"

A. Yes, sir.

Q. What did she answer?

A. With one blast.

Q. Had the "Taurus" and her tow entered by the buoys when those second one-whistle signals were exchanged?

A. No, sir; she had not got in there at the time the second signals were blown.

Q. How far was the "Gulftrade" from the "Taurus" and her tow when the steamer blew that second signal of one blast which was answered by the "Taurus" with one blast?

A. We were at least a quarter of a mile from the mouth of the Schuylkill then.

Q. How far were you away from the "Taurus" when those second signals were exchanged?

A. We were about a quarter of a mile from her then.

Q. Then she must have been about ready to enter?

A. She was just about ready to enter the mouth of the Schuylkill then.

By the Court:

Q. That was when the second whistle signals were exchanged?

A. Yes, sir.

Q. The first one was blown when the steamer was about half a mile from the mouth of the Schuylkill?

A. Yes, sir; that is right.

By Mr. Long:

Q. You said the tug answered the steamer's whistles on both occasions?

A. Yes, sir.

Q. With what?

A. One blast.

Q. On each occasion?

A. Yes, sir.

Q. What is there which mark the entrance to the Schuylkill River?

A. Two buoys.

Q. What are they?

A. One is a red buoy and the other is a black buoy.

Q. How did you come into the Schuylkill River; what is there to mark the entrance to that river?

A. There is a set of range lights there to mark the entrance to the Schuylkill River.

Q. Then there are also, are there not, these two buoys, red and black?

A. Yes, sir; of course.

Q. As the "Gulftrade" and her two attending tugs were proceeding along there, after the second signals of one blast were blown and answered, were there any other whistles blown?

A. Yes, sir.

Q. What was that?

A. Our steamer blew again.

Q. What?

A. One blast on her whistle.

Q. Was that answered by the "Taurus?"

A. Yes, sir.

Q. What was the answer?

A. The "Taurus" answered with one whistle.

By the Court:

Q. When was the third whistle given?

A. The third whistle was given about the time that the steamer was entering between the two buoys.

By Mr. Long:

Q. Where was the "Taurus" and her tow then?

A. They were a little ahead.

Q. How far ahead of you then, in lengths of your steamer, was the stern barge in the tow of the "Taurus?"

A. I should judge that she was about one length of the steamer ahead then.

Q. Did you see the "Taurus" with her four scows arranged in two tiers then?

A. Yes, sir; I did.

Q. And your steamer was about the length of herself away from the stern barge or scow in the tow of the "Taurus" when the third whistle signals were exchanged?

A. Yes, sir; just about.

Q. As you were coming in there with that steamer how were her engines set?

A. Slow speed ahead.

Q. And about what speed were you making with the steamer?

A. About three miles an hour.

By the Court:

Q. Through the water or over the land?

A. Over the land.

Q. What would you estimate the rate of speed of the tide was then?

A. A little over one knot current.
Q. In the channel of the Delaware?
A. Yes, sir, a little over a knot current there.
Q. Does it not run faster than that?
A. No, sir; not much.

By Mr. Long:

Q. Was it young flood then?
A. This accident did not occur on the first of the flood tide; it had been running some time.
Q. What time would you say that the flood tide started to run that day?
A. It had been running up about two or three hours before we started in there.
Q. As a matter of fact, the young flood does run with more force than a flood tide running some time?
A. Yes, sir.
Q. After the third one-blast signal was blown by the "Gulftrade" and answered by the "Taurus" with a one-blast signal, did you notice whether or not the "Taurus" changed her course in any way in answer to this signal?
A. Yes, sir; she did.
Q. What was that change that you noticed?
A. She hauled over to port.
Q. What part of the channel was the "Taurus" in when she hauled over to port?
A. She was then right about in the middle of the channel or a little bit to port.
Q. You are referring to the main ship channel; the twenty-seven foot channel?
A. Yes, sir.
Q. Do you know the distance between those two buoys down there at the mouth of the Schuylkill?
A. It is approximately 380 feet.

Q. What part of the channel was the "Gulftrade" navigating in at the time that she blew the third whistle signal?

A. She was to the eastward of the center line of the channel at that time.

Q. As you entered with the "Gulftrade" between these two buoys which mark the entrance to the Schuylkill River, which buoy were you nearer to?

A. The eastward buoy.

Q. What color is that?

A. That is red.

Q. Did you notice how close you passed to that red buoy with the "Gulftrade?"

A. No, sir; I can't tell you just how close we did pass to it then.

Q. After the third whistle was blown by the "Gulftrade" and answered by the "Taurus," you said that the "Taurus" seemed to head to her port?

A. Yes, sir; hauled to port.

Q. Her port?

A. Yes, sir.

Q. Tell us what, after that, the "Gulftrade" and the "Taurus" did, as you saw them?

A. After that was blown the steamer was proceeding on up there and we were holding our course, and it seemed that in an instant the "Taurus" made a starboard swing and then swung back.

By the Court:

Q. How much time elapsed between her maneuver to the eastward and then her maneuver to the westward?

A. It would not take many minutes to do that because the tug can swing around so quickly. The ship could not swing like that.

Q. I am not talking about the ship; I am talking about the tug "Taurus" that had the barges or scows in tow?

A. Yes, sir; I understood that.

Q. She sheered to the eastward, you said?

A. Yes, sir.

Q. And then sheered again to the westward?

A. Yes, sir.

Q. What I want to get at, as near as you can give it, is the time that elapsed between the time that she sheered to the eastward and the time she sheered to the westward?

A. It would not take long.

Q. I mean the time that elapsed between the time she started to sheer to the eastward and the time that she started to sheer to the westward?

A. It would not take long; I should say a couple or three minutes perhaps.

Q. Do you think it would take that long?

A. To go over and back again?

Q. Between the time she started to sheer to the eastward and the time she started to sheer to the westward?

A. About two minutes.

Q. Is that a minimum or maximum estimate?

A. Maybe that and maybe a little more.

Q. Do you think that it would be from two to three minutes?

A. Yes, sir.

By Mr. Long:

Q. Then do I understand that your answer to Judge Dickinson's question is that it took two or three minutes for the "Taurus" to make the sheer to starboard and then swing back and straighten up to port?

A. Yes, sir; to make the starboard swing.

By the Court:

Q. I did not mean the time that elapsed between the time the maneuver to the eastward and the maneuver to the westward were completed; but I mean the lapse of time between the time she started to sheer to the eastward and the time that she started to sheer to the westward?

A. It would be impossible for me to give the exact time because I was on the steamer and in fact I did not notice when she started to make that sheer.

Q. Then you can't tell us just what that time was?

A. No, sir; because I really don't know just when she started the sheer.

By Mr. Long:

Q. Do I understand you to say that you saw the sheer or that you did not?

A. What I mean is that he had started to make the sheer when I saw her.

Q. How many points would you say that there was in that sheer altogether?

A. At least three.

Q. She swung at least three points, you say?

A. Yes, sir.

Q. To starboard?

A. Yes, sir.

Q. Where did that sheer to starboard bring the tug "Taurus" with respect to the "Gulftrade?"

A. It brought her directly in front of her.

Q. Across her bow?

Mr. Brown: Objected to, because the witness has stated where it brought her.

A. in front of her.

Q. Do you mean in front of the "Gulftrade?"

A. Yes, sir; in the "Gulftrade's" course.

Q. When the "Taurus" started to swing to her port where were her lighters?

A. They were a little on our port bow and swinging with the "Taurus."

Q. Did they swing towards or away from the steamer at that time?

A. Towards her.

Q. Assuming that the "Taurus" had not made this sheer to starboard that you told us about, but had held her course, after she hauled to port, as you have testified, in accordance with the three one-blast whistle signals that were exchanged between the steamer and the "Taurus"; and that the steamer "Gulftrade" had held her course, the course that she was on, will you state whether or not the two fleets would have passed in safety?

A. Yes, sir; I think that if they both had held their courses they would have.

Q. And what clearance would there have been?

A. I should say that we would have gone fifty or seventy-five feet from her.

By the Court:

Q. Take it just as Mr. Long has asked it, you think there would have been fifty to seventy-five feet clearance between your steamer and tugs and the "Taurus?"

A. Yes, sir.

Q. What I want to get in my mind is what, according to your recollection, was the position of the "Taurus" at that time with respect to the channel; what was her position with respect to the ranges?

A. Before she sheered?

Q. How near was the tug "Taurus" to the range lights, or say to the middle of the channel; was she to the left or right or in mid-channel? Was she to the left of mid-channel and if so, how far? You understand that at that time there had been no sudden sheer and there was, in your judgment, seventy-five feet approximately, of clearance?

A. Fifty to seventy-five.

Q. She was to the left then?

A. Yes, sir.

Q. And you think there was room to pass?

A. Before she sheered, yes, sir.

Q. How much increase would there be in the stage of the tide when you went along there at low water?

A. About four feet.

By Mr. Long:

Q. You have a complete rise of about five and a half feet from extreme low to extreme high water?

A. Yes, sir.

By the Court:

Q. Where were the two vessels with respect to the middle lines of the channel or range lines, at the time you say they could have passed in safety if they had held their courses?

A. We were a little to the east of mid-channel and she was over to the west a little ways.

By Mr. Long:

Q. You were off the ranges then?

A. Yes, sir.

By the Court:

Q. I understand from the channel as shown on the chart, that you entered on the ranges?

A. A little to the eastward.

Q. And you proceeded on up in about mid-channel to the point where the collision occurred?

A. Yes, sir; but we had left the ranges. We were further up than they were.

Q. And you proceeded on up there?

A. Yes, sir.

Q. When you left the Delaware and got into the Schuylkill were you proceeding on up in mid-channel on the ranges?

A. Well, we had the ranges a little open to the eastward when we entered the Schuylkill.

Q. Would that make you to the eastward or westward of the center line? And did you continue that way?

A. Eastward a little; we continued on up there. Do you mean, "Did you hold that same course?"

Q. Did you hold the same course until you saw the "Taurus" make that sheer to the eastward?

A. Yes, sir.

Q. About how far east of the range lights were you, or the line of the range lights?

A. Well, we were about half of the width of the ship to the eastward.

Q. Do you mean half the width of the ship with the tug alongside of her?

A. I mean the ship itself; I was taking the center line of the ship.

Q. That would mean about thirty feet roughly?

A. Yes, sir.

Q. Where would you put the "Taurus" then; she was on parallel courses?

A. At that time she was a little bit to the westward of the center line of the channel.

Q. What do you mean by a little bit?

A. At a clearing distance when the third whistle signals were blown.

By Mr. Long:

Q. And when you say it was a clearing distance do you mean fifty or seventy-five feet as you have stated?

A. Yes, sir.

Q. How far over, after that, did the "Taurus" sheer; when she took the starboard sheer?

A. Three points; I answered that once.

Q. About how far inside of the red and black buoys was the point of this collision?

A. I should judge that it was about two lengths of the steamer.

Q. Had you then reached the point where you left the ranges and followed up the channel?

A. We did not use the ranges after we entered the mouth of the Schuylkill.

Q. You used the ranges to enter?

A. Yes, sir; only to enter the Schuylkill.

Q. About how wide a channel did you have to navigate after you got inside of the red and black buoys for a vessel drawing as much as the "Gulf-trade;" twenty-seven feet?

A. It runs about three hundred feet.

Q. What width of channel is there in that place for a vessel drawing ten feet?

A. About seven or eight hundred feet.

Q. How near can you go to the port bank going in with ten feet draft on that stage of the tide?

A. You can go, I should say, to within twenty-five feet of that shore.

Q. How close to the port bank can you carry a steamer drawing twenty-seven feet in that channel on that stage of the tide?

A. You can't get out of the channel, not out of the center practically; if you do, your steamer will be ashore; if you get out of the channel you are ashore.

Q. As I understand it, you can't take the vessel drawing twenty-seven feet to the westward of the ranges in going in there, and after you get past the ranges you have to stick to the channel? Can you get any closer after you get in than when you enter?

A. You can't get any closer to the western bank than you do when you enter there at the mouth. You have to keep towards the eastern bank.

Q. You could not get over there at that stage of the tide?

A. Not to the west.

Q. You have a turn which you had to make just before the point of collision?

A. Yes, sir.

Q. You were standing up there on the bridge of the "Gulftrade" all of the time?

A. Yes, sir; all of the time as we went along there; I did not leave there.

Q. Did you hear the orders that were given to the tugs alongside of the "Gulftrade?"

A. Yes, sir; all of the orders that were given.

Q. You heard them?

A. Yes, sir; I did.

Q. Do you remember hearing any orders to the "Triton" and "Churchman" about the time that this sheer was made by the "Taurus" which you noticed?

A. Yes, sir; I did.

Q. When were those orders given to the "Triton"

and "Churchman" with reference to the sheer of the "Taurus?"

A. Right after I saw the "Taurus" start on that sheer the captain gave the orders to the tugs.

Q. What captain?

A. The captain of the "Triton" who was on the bridge of the "Gulftrade."

Q. What were those orders?

A. The orders to the steamer were half speed ahead and hard a port and to the tugs to hard a port and full speed ahead; those were the first orders.

Q. The order to the "Gulftrade" was half speed ahead and hard a port?

A. To the "Gulftrade," yes, sir.

Q. And full speed ahead to the "Triton" and "Churchman?"

A. Yes, sir; and hard a port, too.

Q. Do you know whether those orders were obeyed?

A. Yes, sir.

Q. Did you pass those orders on to your tug?

A. Yes, sir; I told the people on the "Churchman" to go full speed ahead on her engines and hard a port.

Q. Was that done immediately?

A. It was.

Q. Who gave the orders to the steamer?

A. Captain Quillen.

Q. Who gave the orders to the two attending tugs?

A. Captain Quillen.

Q. Was he in charge of the navigation of the steamer and her two tugs?

A. Yes, sir; he was.

Q. You passed the orders on?

A. Yes, sir; to the tug.

By the Court:

Q. I understood you to say that as you came on up there the steamer was using her power and the engines of the tugs were not working?

A. Not until then.

Q. The tugs' engines were not in motion until that order was given?

A. No, sir; they had not been doing anything; the steamer was using her own power for herself and the tugs.

Q. The tugs' engines were not moving at all until after the libellant tug made this sheer to starboard?

A. No, sir; not the engines of either of the tugs alongside the steamer.

Q. Then they were put full speed ahead?

A. Yes, sir.

By Mr. Long:

Q. Up until that time the tugs were not moving their engines at all?

A. No, sir.

Q. Had there been any orders given to the tugs at all from the bridge of the steamer until that time?

A. No, sir.

Q. Whatever was done with reference to the navigation of the "Gulftrade" coming up there was done with the power of the "Gulftrade" only?

A. Yes, sir.

By the Court:

Q. Was there any order given to change the helm of the steamer after the sheer of the "Taurus?"

A. Yes, sir; hard a port.

Q. The same order that was given to the two tugs?

A. Yes, sir.

By Mr. Long:

Q. But the orders to the engines of the two tugs was full speed ahead and that to the steamer half speed?

A. Yes, sir; at that time.

By the Court:

Q. You had tugs alongside the steamer but the steamer was using her own steam?

A. Yes, sir; up to that time.

Q. And no orders had been given to the tugs?

A. No, sir.

By Mr. Long:

Q. When you made fast alongside of the "Gulftrade," that is the "Churchman" and the "Triton," the fleet started ahead under the power of the steamer "Gulftrade's" engines?

A. Yes, sir.

Q. The engines of the tugs were not moving then?

A. No, sir.

Q. And nothing was done with those engines until just before the collision; that is the engines of the two tugs?

A. That is right.

Q. As you proceeded along there, under the power of the "Gulftrade" that steamer blew three times a signal of one blast to the tug "Taurus" and her tow which were ahead of your tugs and the steamer going on up the river?

A. Yes, sir.

Q. And on each of those occasions that the "Gulftrade" blew a signal of one blast the "Taurus" answered with a similar signal, did she?

A. Yes, sir; each time.

Q. Nothing else but a signal of one blast was blown by either the "Gulftrade" or the "Taurus?"

A. Yes, sir; always one blast.

Q. After the third one-blast signal given and answered do I understand that the "Taurus" sheered?

A. Yes, sir; when she answered.

Q. Which way did she sheer?

A. She pulled to port.

Q. To her port?

A. To her port, yes, sir.

Q. Then what, if anything, did she do?

A. Then she sheered to starboard.

Q. Did you see those two changes on the part of the "Taurus?"

A. Yes, sir.

Q. Was there anything done on the bridge of the "Gulftrade" at that time with reference to the steamer?

A. Yes, sir; Captain Quillen gave the order to hard a port on the "Gulftrade" and to come half speed ahead.

Q. That was to the "Gulftrade?"

A. Yes, sir; to the steamer.

Q. Did you hear those orders given?

A. Yes, sir.

Q. Were there any orders given to the tugs "Triton" and "Churchman" after that sheer to starboard?

A. Yes, sir; hard a port and come full speed ahead with their engines.

Q. When were those orders to the tug with reference to the orders to the steamer?

A. At the same time.

Q. How soon were those orders given after you saw the "Taurus" make this sheer to her starboard?

A. Just as soon as we discerned the sheer Captain Quillen gave those orders.

Q. Immediately upon the "Taurus" taking that sheer, would you say those orders were given?

A. Yes, sir; they wanted to sheer the ship so as to clear the "Taurus."

Q. And her tow?

A. Yes, sir.

Q. That would sheer the ship how?

A. To her starboard.

Q. Do you know whether or not those orders, which you say were executed immediately, had any effect in sheering or swinging the head of the "Gulftrade" to starboard?

A. Yes, sir.

Q. Could you see that yourself?

A. Yes, sir; I could tell that her head was going off some to starboard.

Q. Can you gvie us any idea how far, in points, the head of the steamer swung to starboard under the effect of those orders to her and her tugs?

A. Well, I should judge that her head swung off about two or three points.

Q. Where was the "Gulftrade" then with respect to the "Taurus" or where was the "Taurus" with respect to the "Gulftrade;" was the "Taurus" still ahead?

A. She was still ahead.

Q. Were there any orders given on the bridge after the order to hard a port, half speed ahead on the steamer and full speed ahead on the tugs?

A. Yes, sir.

Q. What?

A. The next order was to the steamer full speed astern.

Q. That was to the "Gulftrade?"

A. Yes, sir.

Q. Was that order obeyed?

A. Yes, sir. As far as he could.

Q. What effect did that have on the heading of the steamer, if any?

A. The backing of the steamer would have the effect of swinging her quicker.

By the Court:

Q. Do you mean that it would throw her bow to the eastward?

A. Yes, sir.

By Mr. Long:

Q. What is that due to?

A. To backing on propeller makes her swing more quickly than otherwise.

Q. When backing it makes her swing rapidly?

A. Yes, sir; by the motion of her propeller; that causes her to swing rapidly.

Q. To starboard?

A. Yes, sir.

Q. Did you see the collision?

A. I saw when she struck the stern barge but not when she struck the head barge.

Q. Was the head barge off your side so that you were not able to see it?

A. The bluff of the bow obscured the view so that I could not see it.

Q. Did you see that head barge at all?

A. The one that was struck; yes, sir; afterwards I saw that barge but not when it was hit.

Q. When did you see that head barge?

A. When it was over to the starboard of us.

Q. The collision had happened then?

A. Yes, sir; the collision had happened and the barge was to our starboard.

Q. Where was the "Taurus?"

A. Out ahead of us.

Q. Do you know whether the "Gulftrade" kept on going up the river?

A. Not then.

Q. She was stopped?

A. Yes, sir; entirely.

Q. How soon after the collision did you get under way again with your fleet of boats?

A. When everything was clear the "Gulftrade" started on her way again.

Q. You say that one scow came down on the starboard side of the "Gulftrade" after the collision?

A. Yes, sir; that was the one that turned over.

Q. What became of the other three scows after the collision had taken place?

A. They drifted down on the port side of the steamer.

Q. Did you see how close they came to the bow of the "Churchman" as they drifted down there?

A. They were right alongside of her bow; I should judge that they were within twenty feet of that tug when they drifted on by there.

Q. Did you say that all of three of them came down there on that port side?

A. Yes, sir; three of the four scows came down on that side; the other one was on the starboard side.

Q. That was after the collision?

A. Yes, sir; when they were loose.

Q. Do you know whether there was any effort

made to get to this man on the scow that drifted down on the starboard side of the steamer after the collision?

A. Yes, sir; they tried to save him after the collision was over, of course.

Q. It had turned over then?

A. Yes, sir; the man was out there in the water somewhere, I presume.

Q. What effort was there made to get him?

A. There was a life ring thrown from the steamer "Gulftrade" to try and save him with.

Q. Do you know whether any member of the crew went out in the water after him?

A. Yes, sir; one of the crew of the steamer also jumped overboard to try and help him; that was right away after the collision was over.

Q. Did any of the tugs make any effort to save this man and if so, what did they do; I mean the "Churchman" and the "Triton" after the collision?

Mr. Brown: That is objected to; that had nothing to do with the facts of the collision.

Q. It was the scow 18 that was capsized?

A. I believe so, though I did not pay any attention to the numbers of those scows.

Q. What, if anything, was done with that capsized scow after the collision?

A. After the collision the tug "Taurus" went to her and drove her up on the beach.

Q. On which side?

A. Starboard side.

Q. That is the eastern side of the river?

A. Yes, sir; of course that is the eastern side of the river; they put her up on the bank.

Q. Did you say that you have had considerable experience in navigating in and out of the Schuylkill River with those oil tankers?

A. Yes, sir; during the time that I have been on tugs here I have gone in and out of there a good many times.

Q. With oil steamers?

A. Yes, sir; taking them in and out of their docks.

Q. How many years has that experience covered?

A. Since 1923; three years.

Q. That is as master?

A. Yes, sir.

Q. Your experience has been entirely around this harbor, has it not?

A. Yes, sir.

Q. Before 1923, did you assist steamers like the "Gulftrade" to go to their docks in the Schuylkill?

A. Helping others.

Q. Whenever you got the job?

A. Yes, sir.

Q. How frequently, during the past three or four years would you say that you had helped others in that work?

A. Very frequently.

Q. Practically all of the time?

A. Yes, sir; you might say off and on all of the time since I have been on the river.

Q. Your tugs do a great deal of such type of work?

A. Yes, sir; and also haul barges and lighters there; whatever we are sent to do.

Q. As you came up the Schuylkill that day from the Delaware, did you have any difficulty with the "Gulftrade" in getting into the Schuylkill because of the flood tide from the Delaware River?

A. No, sir; not any.

Q. As a matter of fact after you got inside of those buoys at the mouth of the Schuylkill did you feel the effect of that flood tide?

A. No, sir.

By the Court:

Q. Before the sheer to which you have testified the libellant's vessel made, the courses of the two fleets were such that if each had maintained its course they would have passed each other in safety?

A. Yes, sir; we would have gone by the tug and her tow all right, I think, if she had not made that sheer to the starboard just before the collision.

Q. She first swung to her port and then to her starboard; I mean the libellant tug?

A. Yes, sir; the "Taurus."

Q. What would have been the distance of clearance do you think if each vessel had maintained her course?

A. I should say that would have been approximately seventy-five feet.

Q. I also got the thought, or thought I did, that the sheer of the libellant tug to the eastward was the thing which put the libellant tug into collision contact; is that what you mean, Mr. Long?

Mr. Long: Yes, sir; that is what we say; that she swung directly across the course of the "Gulftrade."

Q. The third thought I got from this evidence is that you contend that the sheer of the respondent vessel to the eastward was because of the sheer of the libellant tug to the eastward, and was for the purpose of avoiding the collision?

Mr. Long: Yes, what we were endeavoring to do

then was to avoid hitting the tow that the "Taurus" had.

Q. That sheer of respondent's tug was not made until after the "Taurus" had sheered to starboard?

Mr. Long: Yes, sir; across the course of the "Gulftrade" and her attending tugs.

Q. I understood the witness to say that the libellant's vessel sheered three points to the eastward?

Mr. Long: Yes, sir; to her starboard.

Q. To the eastward side of the River Schuylkill?
A. Yes, sir.
Q. That is correct?
A. Right across the course of the "Gulftrade."
Q. And about three points?
A. Yes, sir.
Q. Then do I understand that your evidence is that respondent's vessel sheered three points to the eastward?

Mr. Long: Yes, sir; that is correct but the collision occurred while the vessel was sheering.

Q. Then while the steamer was in the act of swinging those three points the collision occurred; is that your idea?

Mr. Long: Yes, sir; that the collision occurred while the steamer was making her sheer.

Q. I was interested in knowing how long it would take the steamer to answer her helm; I remember

your asking the question whether the steamer had responded to the order to port her helm, and I understood the witness to say that she had?

Mr. Long: Yes, sir.

Q. Did the witness state that she answered her port helm to the extent of three points?

By Mr. Long: Before the collision?

Q. I did not understand him to say that it was after the collision; I want to be enlightened as to that.

Mr. Long: I understood the witness to say that the total change of heading on the part of the steamer was two to three points under the port helm —hard a port helm and the orders to the tugs alongside to hard a port.

Q. And the order to go ahead?

Mr. Long: Yes, the order to the tugs to go ahead full speed and the steamer half speed; those were the first orders given when the tug "Taurus" was seen to change her course suddenly to the starboard.

Q. I was simply asking for information?

Mr. Long: You see that the collision did not take place between the tug "Taurus" and the steamer "Gulftrade." It took place between the "Gulftrade" and the tow that the "Taurus" was taking up the Schuylkill.

By Mr. Long:

Q. Captain, I understand that when it was seen on the bridge of the "Gulftrade" that the tug "Taurus" was sheering to starboard certain orders were given to the tugs as well as to the steamer herself?

A. Yes, sir.

Q. The first orders were full speed ahead on the engines of the tugs and hard a port, and half speed ahead on the "Gulftrade" and hard a port?

A. Yes, sir.

Q. Which orders were immediately obeyed?

A. Yes, sir.

Q. Then subsequently an order was given to the steamer to reverse her engines?

A. Yes, sir. That order was given to the steamer's engines; that was to go full speed astern.

Q. On the engines of the steamer?

A. Yes, sir.

Q. And that resulted in swinging the steamer's head two or three points?

A. Yes, sir; it swung her head about two or three points; I could not tell exactly.

Q. To starboard?

A. Yes, sir; to starboard.

Q. Did the steamer complete that full swing before the collision occurred or not?

A. I don't think so before the collision occurred.

Q. That is she collided with the tow before she had completed that swing?

A. Yes, sir.

Q. And her entire swing until she was stopped after the collision was two or three points to her starboard?

A. Yes, sir.

Q. But do I understand that under the effect of the orders which you say were given, that she was still swinging at the time that the collision took place?

A. Yes, sir; she was still swinging when she came into collision with the tow of the "Taurus."

Q. So that the complete change of two or three points marks the position of the vessel after the collision was over; the position of the "Gulftrade?"

A. Yes, sir.

Q. Where was she heading then; more to the eastern bank or to the center of the channel?

A. After she made that swing she was heading more towards the eastern bank.

By the Court:

Q. Does the evidence show what came into collision with the steamer?

Mr. Long: Yes, sir; the other evidence does, and I have the master of the "Triton" here to testify as to that.

By Mr. Long:

Q. Do I understand that you did see the collision between the "Gulftrade" and one of the scows?

A. With the rear scow.

Q. Do you remember what one that was?

A. That was the 33.

Q. What part of the steamer struck the scow?

A. The bluff of the port bow of the steamer struck this rear scow 33.

Q. That was one of the scows in the rear tier of the tow of the "Taurus?"

A. Yes, sir.

Q. Where did the steamer hit the scow if you noticed?

A. She struck that scow a little forward of the after corner on the starboard side of the lighter.

Q. Did you notice what became of that lighter then; what effect the steamer's blow had on it?

A. It went sidewise, over bodily.

Q. To its port or its starboard?

A. To its port.

Q. You did not see the collision between the steamer and the lighter that was overturned?

A. I did not.

Q. That was the 18?

A. Yes, sir.

Q. What do I understand was the effect of the blow of the bluff of the steamer's port bow was on the 33; did it push it sidewise and forward or how?

A. It was sidewise; it did not have any tendency to push it ahead.

Cross-examination.

By Mr. Brown:

XQ. Your tug and the "Triton" were at Fort Mifflin wharves waiting for this steamer "Gulftrade?"

A. Yes, sir.

XQ. And when she came along your vessel and "Triton" were made fast alongside of her?

A. Yes, sir; we were.

XQ. And you went then to the bridge of the steamer?

A. Yes, sir.

XQ. Which side?

A. Port side.

XQ. Your vessel was on the port bow of the "Gulftrade?"

A. Yes, sir.

XQ. Did you go right to the bridge?

A. Yes, sir; right away.

XQ. Who else were on the bridge of the "Gulftrade" at the time that you got there?

A. There was a quartermaster, two other men, and the master of the steamer.

XQ. Did the master stay there?

A. Not long.

XQ. He left the bridge very shortly after you got up there, did he?

A. Yes, sir; it was not long after I got there that he went from the bridge.

XQ. Do you know where he went?

A. No, sir; I did not pay any attention to where he went after he stepped down from the bridge.

XQ. He left almost immediately after you got there?

A. Yes, sir.

XQ. Did he return?

A. No, sir.

XQ. Whom did that leave on the bridge at the time that the master of the steamer left there?

A. That left these other two men that I mentioned, the quartermaster and myself.

XQ. Who were those other two men?

A. That I don't know.

XQ. Have no idea?

A. No, sir; except that they belonged to the ship.

XQ. The quartermaster was at the wheel?

A. Yes, sir.

XQ. Where was Captain Quillen of the "Triton" at the time the master of the ship left?

A. He had not got there then.

XQ. So he was not one of the two men?

A. No, sir; I knew him.

XQ. He came there later?

A. Yes, sir; I was on the bridge before Captain Quillen got there.

XQ. Do you know where he was then?

A. Coming up after me.

XQ. He had not arrived then?

A. Not at the time that the master of the ship left the bridge; he was coming.

XQ. While he was coming there, but had not arrived on the bridge was the steamer under way?

A. At that time she was drifting.

XQ. Where?

A. In the Delaware.

XQ. She was not under way?

A. Yes, sir; she was under way then.

XQ. When did Captain Quillen come up to the bridge?

A. He came up there immediately after I got there; right away after I got there.

XQ. Where did he take his position?

A. On the bridge.

XQ. Whereabouts on the bridge?

A. No particular place on the bridge as I could say; he simply walked around there from one side to the other.

XQ. He had charge of the navigation of the steamer as she proceeded on her way, did he?

A. Yes, sir.

XQ. Full charge?

A. Yes, sir. He gave all of the orders as to the movements of the steamer.

XQ. As well as the two tugs alongside?

A. Yes, sir.

XQ. You do not know who those other two men

were whom you have mentioned as being also on the bridge?

A. No, sir.

XQ. Nor what their position was?

A. No, sir. I could not tell you that except they must have been from the steamer.

XQ. You went to the port side?

A. Yes, sir.

XQ. Were you on the port side of the bridge when Captain Quillen got there?

A. Yes, sir.

XQ. Did you continue to stay on the port side of the bridge as you proceeded on your way?

A. Yes, sir; practically all of the time.

XQ. Not all of the time?

A. The biggest part of the time anyway I was on the port side of the bridge.

XQ. Why did you stay there?

A. There was no special reason for my staying there, I wanted experience.

XQ. What do you mean by that?

A. To see what was going on there.

XQ. You did not take any part in the navigation of the steamer or her attending tugs as you were proceeding?

A. No, sir; I didn't.

XQ. You did not give any orders, did you?

A. Yes, sir.

XQ. What orders did you give?

A. What Captain Quillen gave.

XQ. You repeated his orders?

A. Yes, sir. I did not give any orders except what he said to give.

XQ. Then you passed his orders along, did you?

A. Yes, sir; I did.

XQ. To whom?

A. To the tugs alongside the steamer.

XQ. Where were the tugs that you gave those orders to?

A. The one was my tug, the "Churchman," and the other was the "Triton" on the port side of the steamer.

XQ. The "Churchman" was forward of the "Triton?"

A. Yes, sir; she was on the port bow of the steamer and the "Triton" on her port quarter; the steamer's port quarter.

XQ. You say that you heard the "Gulftrade" blow to the "Taurus" and the "Taurus" answer, each time one blast?

A. Yes, sir.

XQ. Coming down to the second one blast signal; at the time that was blown where was the "Gulftrade?"

A. At that time she was about a quarter of a mile from the mouth of the Schuylkill.

XQ. And at that time how far would you say the steamer was from the last scow in tow of the "Taurus?"

A. I should say that at that time the "Taurus" was just about entering the mouth of the Schuylkill.

XQ. And you were still a quarter of a mile away, do you think, at that time?

A. Yes, sir; as near as I could estimate it we were about that distance away then.

XQ. Could you tell what part of the stream the "Taurus" was in when entering there?

A. No, sir; I could not.

XQ. The "Gulftrade" proceeded on up the river after that second blast, did she?

A. Yes, sir; she did.

XQ. And while she was proceeding on up there she blew the third time, you say?

A. Yes, sir.

XQ. Did she swing into the mouth of the Schuylkill before or after the third whistle signal was given to which you have already testified?

A. She was just about entering the mouth of the Schuylkill at that time.

XQ. What was her position with respect to the channel?

A. A little to the east of the ranges.

XQ. What was her position with respect to the buoys there at that time?

A. She was closer to the starboard buoy as she was proceeding along there.

XQ. As she was entering?

A. Yes, sir; she was.

XQ. Were these buoys forward of her, amidships, or aft at that time?

A. I should judge that they were about abreast of the steamer at that time.

XQ. What were you particularly interested in watching at that time in the performance of your duties?

A. I was getting experience.

XQ. You were interested in getting experience?

A. Yes, sir.

XQ. From what did you think that you would get experience in watching there?

A. I was watching the movements of the vessels as we went along there, what we were doing.

XQ. Did you observe aft, from the steamship's stern how she was swinging into the river?

A. Yes, sir; I looked to see how she was coming in there past the buoys.

XQ. When did you do that?

A. At various times.

XQ. Where was the steamer when you first looked back to see how she was swinging in there?

A. I could not tell you that.

XQ. Why?

A. Because I did not pay attention to the times that I looked aft there.

XQ. Can you tell us whether she had entered the mouth of the Schuylkill then?

A. I could not tell you whether she had got past the buoys or not.

XQ. I suppose that you were interested in watching the ranges as you went along?

A. I looked to see where the ranges were as we entered the mouth there.

XQ. I understand that you did nothing with respect to the ranges after you entered; you did not pay any further attention to them?

A. No, sir; after we got inside there I did not pay any more attention to them.

XQ. You did not navigate with respect to the ranges after you got inside the mouth?

A. No, sir.

XQ. And you were, therefore, no longer interested in them?

A. I did not pay any more attention to them after we got inside.

XQ. What do you call getting inside?

A. I call getting inside there after we get clear of the buoys and start on up.

XQ. When the third one whistle signal was blown where was the "Taurus" and hew tow with respect to your vessel?

A. I should judge that she was about a length of the steamer ahead then.

XQ. Four hundred feet?

A. Or a little more.

XQ. Was she and her tow to your port, or to your starboard, or ahead then?

A. Ahead.

XQ. Was she to your port at all then?

A. A little bit, I judge.

XQ. And ahead?

A. Yes, sir.

XQ. Was the tow following the "Taurus" then?

A. Yes, sir.

XQ. Where was the stern of the stern barge with respect to your steamer, off to port?

A. I should say that the whole tow was about in the same position then.

XQ. About how far off to port would you say that she was?

A. I could not give you the distance.

XQ. You have said that you thought, according to the best estimate you could make, the fleets would have passed fifty to seventy-five feet of each other when you came in there and before the tug sheered off to starboard; how far off to your port was the "Taurus" when you signalled?

A. It was not a clearing distance at that time.

XQ. I thought you said it was?

A. That was when we got in.

XQ. Then you mean that you were rounding into the Schuylkill at that time?

A. Yes, sir; we were.

XQ. Had you straightened out on your course when the third whistle was blown?

A. We were entering the mouth of the Schuylkill when that whistle was blown.

XQ. Under what helm were you proceeding at that time?

A. I could not tell you that because I was not directing the navigation of the ship.

XQ. Then how do you base your position as entering the mouth of the Schuylkill then?

A. By the ranges.

XQ. Not by the buoys?

A. No, sir.

XQ. Where were you with respect to the buoys when the third whistles were blown?

A. Just entering the mouth.

XQ. You know where the buoys are?

A. Yes, sir; you have to enter between those buoys to get into the Schuylkill.

XQ. Where were you with respect to the buoys at the time that third whistle was blown?

A. We were just entering between the buoys at the time the third whistle was blown?

XQ. You mean you were getting in past the buoys and that marked your entrance into the Schuylkill?

A. Yes, sir; when we get in there past the buoys we are in the Schuylkill River.

XQ. What do the ranges indicate?

A. They mark the channel as you come in there.

XQ. From the Delaware?

A. Yes, sir.

XQ. And you pass between the buoys?

A. Yes, sir; certainly.

XQ. As you were coming in there from the Delaware to the Schuylkill, did you notice the ranges?

A. As we came in.

XQ. As you came from the Delaware to the Schuylkill?

A. Yes, sir; as we came in there.

XQ. Were you on the ranges as you entered there?

A. Not on the ranges, no, sir.

XQ. Where were you with respect to the ranges as you were coming in there?

A. To the eastward.

XQ. How much?

A. About half the ship's breadth.

XQ. That would be about thirty feet?

A. Something like that.

XQ. You do not know under what helm the ship was proceeding at that time?

A. No, sir; I could not tell you just what helm she was under at that time.

XQ. You gave no orders about that?

A. No, sir.

XQ. Who gave them?

A. Captain Quillen.

XQ. You paid no attention to them?

A. Not so much.

XQ. Do you remember hearing any orders to the ship as to her helm at any time up to the time of the collision, or did you hear none?

A. Yes, sir; I remember that there were orders given about the ship's helm.

XQ. But you don't remember what they were?

A. No, sir; I would not be able to tell you just what they were because I didn't try to remember them.

XQ. At the time that the third whistles were exchanged you say that the "Taurus" went off to port?

A. Yes, sir.

XQ. You saw her changing?

A. Yes, sir.

XQ. I assume that you were continuously on the bridge during all of the time?

A. Yes, sir; I stayed there right along on the bridge of the steamer.

XQ. At the time that you saw the "Taurus" go off to port were her barges following her?

A. Yes, sir.

XQ. You could see that?

A. Yes, sir.

XQ. How long would you say that she went off to port?

A. I would not say.

XQ. Don't you know?

A. No, sir; I don't know.

XQ. Well, about how long; you were there watching what went on out there?

A. I couldn't give you any specified time how long it was that she went off there to port.

XQ. Of course, at the time that she came in there the "Taurus" was a little to the west of mid-channel?

A. Yes, sir.

XQ. And at that time, in answer to your third one-blast signal she went off to port?

A. Yes, sir.

XQ. Did you keep on observing the "Taurus" and her tow after she went off to port that way?

A. No, sir; I did not keep on looking at her at all times there.

XQ. You did not continue to look at her?

A. No, sir.

XQ. How near did the "Gulftrade" get to the tow of the "Taurus" before you observed what you say was this sheer on the part of the "Taurus?" Can you estimate that?

A. We had gotten within about half the length of the ship when I observed that.

XQ. So that at the time you observed the sheer of the "Taurus" to which you have testified, the "Gulftrade" was about two hundred and twenty-five feet astern of the last tier of scows; is that correct?

A. Yes, sir; I told you that I thought that it was about half the length of the ship.

XQ. You don't think that you were about up abreast of the scows at that time?

A. No, sir.

XQ. You think that you were about two hundred and twenty-five feet astern?

A. I said something like half the length of the "Gulftrade" at that time.

XQ. That would be approximately two hundred and twenty-five feet, would it not?

A. I could not say it only approximately.

XQ. And I am asking you if 225 feet was not the approximate distance then?

A. Only the approximate distance.

XQ. You may have been nearer?

A. Yes, sir; and perhaps further.

XQ. As a matter of fact were you looking at the scows at this time?

A. Yes, sir.

XQ. All of the time?

A. Not all of the time; of course not.

XQ. I suppose that you did not pay much attention to that tow, as you went along there?

A. No, sir; I can't say that I did; of course, they were both together.

XQ. The scows were on a hawser astern?

A. Yes, sir; in two pairs.

XQ. The tug was considerably ahead of the scows, was she not?

A. She was some distance ahead.

XQ. And she was that much further ahead of your steamer?

A. Yes, sir. She was further ahead of us than the tow was.

XQ. About how far would you say that the tug was ahead of her tow; the tug "Taurus" I mean?

A. To my understanding there was about fifty feet of tow line out.

XQ. Is that how far she looked to you?

A. I would have said that she was further ahead of her tow than that, but that is what I understood was the distance between the tug and tow.

XQ. To the first pair?

A. Yes, sir.

XQ. How much further than fifty feet did this tug "Taurus" seem to you to be ahead of her tow?

A. I would not like to say because it is very hard to judge distances on the water.

XQ. As a matter of fact you were not paying so much attention to this tug and her tow, were you?

A. Yes, sir; I was paying attention to them but I was not looking at them all of the time. I had nothing to do but stand up there on the bridge and look around.

XQ. At the time that you observed what you call the sheer of this tug you said, a moment ago, that you thought the tug and her tow were off to your port fifty to seventy-five feet; is that correct? Didn't you say they would pass clear then?

A. You said a moment ago the tug; now you say the tug and her barges.

XQ. Well, how far to our port would you say that they were at that time?

A. I should say that they were from fifty to seventy-five feet away.

XQ. I think that you said that you saw them off that distance to your port, 50 to 75 feet, before you observed this sheer to port?

A. I said that I saw her going off to port she was that distance to our port.

XQ. What about the barges?

A. They were the same.

XQ. And the barges sheered to port too?

A. Yes, sir; but they would not go off there as quick as the tug would go.

XQ. Do you mean then that when the tug went off to port she did not alter the course of the barges very much?

A. I said that they would not go off to port as quick as she would but some.

XQ. Did they go off to port too?

A. I think they did some.

XQ. She took them to port with her?

A. Yes, sir; I think that they were following her to port when she went to port.

XQ. That is the tug and her tow were to port before the tug made that sheer to port when the third one-whistle signal was blown?

A. Yes, sir.

XQ. How much?

A. Not so very much.

XQ. About how much?

A. I said that it was not very much but it is very hard to estimate that.

XQ. Give us the best estimate that you can?

A. Fifty to seventy-five feet.

XQ. That was at the time that the third signal was blown; is that correct?

A. Yes, sir; something like that; of course, I cannot say exactly.

XQ. And after that the "Taurus" went to port?

A. She held her course then.

XQ. You have testified a dozen times that after the third whistles were blown the "Taurus" went to port?

A. Just at that time.

XQ. But you saw her go to port?

A. Yes, sir; I saw her go off to port.

XQ. Did the "Taurus" take the scows over there with her when she went to port?

A. Naturally she had to.

XQ. They followed her to port?

A. Yes, sir.

XQ. How much did she take the barges with her—how much distance off to port—after the "Taurus" sheered to port, as you have testified?

A. I could not tell you what the distance was; she went off to port some.

XQ. You must have some idea about that; was it as much as a hundred feet?

A. No, sir.

XQ. Then do you mean that that sheer to port did not alter the course of the barges materially to port?

A. Very little.

XQ. After that you said that the "Taurus" sheered two points to starboard?

A. No, sir.

XQ. Didn't she sheer at all to starboard?

A. Yes, sir.

XQ. How many points did you say?

A. I don't recollect saying about any specific points.

XQ. Don't you remember saying that she went off to starboard two points then?

A. I did not.

XQ. Did you not testify that just prior to the collision the "Taurus" sheered to starboard?

A. Yes, sir; I said that.

XQ. And she did sheer you say?

A. Yes, sir.

XQ. How long did that sheer last?

A. The one to starboard?

XQ. Yes, sir; the one to starboard that you said took place just before the collision?

A. That I can't say.

XQ. Have you no idea about that?

A. I would not like to say.

XQ. Are you sure she sheered to starboard?

A. I am sure as to that.

XQ. But you have no idea how long it lasted?

A. I would not say.

XQ. Then you testified that after she had sheered to starboard a little bit, she came back to port?

A. Back again.

XQ. That is, according to your testimony, she sheered to starboard a short time before the collision, and then came back to port again?

A. Yes, sir; after she made this sheer to starboard, then she started back to port again.

XQ. Would you say that she sheered to starboard as far as she directed her course to port after the third one-whistle signals were exchanged?

A. I don't understand the question.

XQ. You have testified that a third whistle was blown by the "Gulftrade" and answered by the "Taurus" and that you noticed the "Taurus" going off to port?

A. Yes, sir.

XQ. She was going to port some little time?

A. I could not tell you just the length of time.

XQ. But that was the first thing you saw her do after the third one-whistle signal was blown?

A. Yes, sir.

XQ. And she was going to port some little time; how long you can not say?

A. That is right.

XQ. You then testified that you saw the "Taurus" sheer off to starboard?

A. Yes, sir; that was after she went to port.

XQ. Now, would you say that she went to star-

board for as long a period of time as she went to port previously?

A. Yes, sir; about.

XQ. About the same length of time?

A. Yes, sir; as near as I could tell you; of course, I did not keep track of all of the times though.

XQ. The sheer to port did not affect the courses of the barges to any extent, I understand?

A. No, sir; because the port sheer was not as much as the starboard.

XQ. Then she sheered back to port?

A. Yes, sir; afterwards.

XQ. That was after the sheer to starboard?

A. After that.

XQ. Then when she sheered to starboard the barges must have been about a hundred or a hundred and fifty feet off your port, is that right?

A. Not that much.

XQ. How much?

A. I said that it would be about fifty or seventy-five feet then.

XQ. You think that before she made this sheer to starboard that you have told us about you would have passed the scows in safety?

A. Yes, sir; if she had not made that sheer I think we would have gone by.

XQ. You remained on the bridge of the steamer during all of the time that the tug "Taurus" made those sheers?

A. Yes, sir.

XQ. And you were watching the "Gulftrade" during all of the time?

A. Yes, sir.

XQ. How could you tell whether the "Gulftrade" did not change her course?

A. I could tell the way she was going there.

XQ. But you could not tell that she did not change her course could you?

A. Yes, sir.

XQ. I thought you said that you were not in charge of the navigation of the steamer and did not keep track of the orders that were given to her helm?

A. I was not but I could tell whether she changed her course then or not.

XQ. How could you tell?

A. By marks.

XQ. What marks?

A. I could tell by the marks on the land as we were coming along there.

XQ. You had got off the ranges then?

A. Yes, sir.

XQ. And you were not judging the course of the steamer then by where she was with respect to the ranges?

A. Not then.

XQ. She was off the ranges then?

A. Yes, sir; but I could tell from her position in the river and the marks along the land.

XQ. You do not know what course the "Gulftrade" was on at the time of the collision?

A. Not the compass course.

XQ. When she started up you think she was to the eastward of the ranges?

A. They were open to the eastward.

XQ. You could not tell without looking at the ranges where the "Gulftrade" was with regard to the center of the channel, could you?

A. Yes, sir; because we had got past the ranges when we got in there.

XQ. Could you tell without looking at the ranges whether the ship had got to the westward?

A. Yes, sir; she had not come back to the westward.

XQ. How do you know that?

A. I could tell it by looking at the ship; I was there and saw what she was doing.

XQ. What you mean is that you did not notice her make any change there?

A. I know that she didn't.

XQ. You never looked at the ranges after you got in to see where your steamer was navigating with respect to the ranges, did you?

A. No, sir; because we were not using the ranges after we got in there.

XQ. How far off to the western bank was the tow of the "Taurus" at the time that the third whistle signals were exchanged between the steamer and the "Taurus?"

A. I should say that it was about a hundred and fifty or two hundred feet.

XQ. That is your best estimate?

A. Yes, sir.

XQ. It is only an estimate?

A. Yes, sir; that is what it seemed to me.

XQ. I understood you to say that you did not notice the "Taurus" when she started to make the sheer that you have testified to?

A. No, sir; not at the time; the tug started to sheer and then I saw her.

XQ. You did not know where she was at the time?

A. Not exactly.

XQ. I understand that there was an order given on the bridge to port the helm of the steamer?

A. Hard a port.

XQ. How long before the collision took place was the order given; I mean the order with reference to the steamer's helm?

A. When the "Taurus" made that sheer was when that order was given.

XQ. You said that you saw the collision with the 33?

A. Yes, sir.

XQ. Did you also feel the jar of that collision?

A. Yes, sir.

XQ. Was that about the time that the order was given to hard a port the helm?

A. No, sir.

XQ. When was that?

A. The order to hard a port came before the collision with the scow.

XQ. How long before?

A. It was given before; I know that.

XQ. How long?

A. I did not keep track of the time.

XQ. You can't tell us?

A. No, sir; it was not long.

XQ. What is your best estimate of the time that elapsed between the third whistle signals and the collision?

A. I don't want to try and give those times because I did not keep account of minutes.

XQ. Can't you give us some sort of an estimate; you were there and saw what was going on?

A. No, sir.

XQ. Was it ten minutes?

A. No, sir; I don't think so.

XQ. Five minutes?

A. That I could not say.

XQ. Was it as much as three minutes?

A. I could not give you any estimate at all in minutes; I did not pay enough attention to the time to be able to judge it.

XQ. The order to hard a port the helm of the "Gulftrade" was not long before the collision?

A. No, sir; it was not long before the collision with the 33.

XQ. That was the first scow struck?

A. Yes, sir.

XQ. Can you tell us anything about that time?

A. It was given at the time that the "Taurus" made that sheer to starboard.

XQ. After that?

A. Yes, sir; because she was sheering then at the time that was given.

XQ. How long was that before the collision?

A. I could not tell you how long before the collision it was; it would be impossible for me to tell that.

XQ. Then you say that there was an order to go astern on the "Gulftrade?"

A. Full speed astern.

XQ. Was that before or after the collision?

A. That was before too.

XQ. How long before?

A. Right before.

XQ. A minute or two?

A. A second or two I guess.

XQ. As the "Gulftrade" rounded into the Schuylkill, did she seem to be astern of the tug "Taurus" and her tow or a little to the port or starboard of them?

A. We were astern of the tug and tow when we were rounding in there.

XQ. Then can you form any estimate as to how far astern you were then of the stern scow in tow of the "Taurus?"

A. I should say that we were about the length of the ship astern then.

XQ. Four hundred feet or more?

A. A little more maybe.

XQ. And it was after that that the third whistle signals were blown?

A. The third whistle was blown just about the time that we were entering the mouth.

XQ. You saw the "Taurus" and her tow ahead of you in the Schuylkill River then?

A. Yes, sir.

Cross-examination.

By Mr. Dawson:

XQ. You were assisting Captain Quillen of the tug "Triton" during the time that you were coming up there on the "Gulftrade" and were on the bridge of the steamer with him?

A. Yes, sir.

XQ. Captain Quillen was in full charge of the maneuvers and navigation of the "Gulftrade?"

A. Yes, sir.

XQ. As well as the "Churchman" and "Triton" alongside of the "Gulftrade" as the fleet proceeded on up the river?

A. Yes, sir.

XQ. And had been in sole charge from the time that you got under way?

A. That is right.

XQ. He gave all of the orders?

A. Yes, sir.

XQ. Do you know whether or not the orders that he gave to the "Gulftrade" were executed?

A. Yes, sir. All of them were.

XQ. Promptly?

A. Yes, sir; right away.

XQ. And was the same true of the orders that were given to the two attending tugs, the "Triton" and "Churchman?"

A. Yes, sir.

XQ. The "Gulftrade" handled all right, did she?

A. Yes, sir.

XQ. Did your two tugs handle all right?

A. Yes, sir.

XQ. Who actually gave the three one-whistle signals that were blown on the "Gulftrade" before the collision?

A. I really can't say.

XQ. Did you hear any other signals except those three one-whistle signals given by the steamer and answered by the "Taurus" with one whistle on three occasions?

A. No, sir.

XQ. Did you hear any alarm signals blown by the "Taurus" just before the collision; did you hear them?

A. I did not.

XQ. There has been some testimony that such signals were blown by the "Taurus" would you have heard them if they had been blown just before the collision?

A. I would have; yes, sir.

J. H. QUILLEN, having been duly sworn according to law was examined and testified as follows:

By Mr. Long:

Q. How old are you?

A. Fifty-three now.

Q. Where do you live?

A. 335 N. 53rd Street, Philadelphia.

Q. What is your business?

A. Master of steam vessels.

Q. How long have you been following the water?

A. About thirty-four years.

Q. Continuously?

A. Yes, sir.

Q. Have you had considerable experience around the port of Philadelphia?

A. Yes, sir; I have been working on vessels around this port a good many years.

Q. Do you hold a license?

A. Yes, sir.

Q. From the U. S. local inspectors?

A. Yes, sir.

Q. What is that license, Captain Quillen?

A. Master and pilot for the Delaware River and Bay and Atlantic coast Cape Hatteras to Sandy Hook and mate for all oceans.

Q. What class of vessels have you had experience on since you have held that license?

A. On the "Triton" principally.

Q. The most of your experience has been on tugboats, as I gather?

A. Yes, sir.

Q. Here in the Delaware?

A. Yes, sir.

Q. Have you been on the coast on other tugs?

A. Yes, sir; one.

Q. What tug was that?

A. The "Bluebell."

Q. How long have you been master of the "Triton?"

A. Since January 8, 1908.

Q. So that you have been on her for practically eighteen years now?

A. Yes, sir; more than eighteen.

Q. Were you on the "Triton" when she was known as the "Asa Hughes?"

A. Yes, sir; I was.

Q. During the eighteen years that you have been on the "Triton" what has been the principal kind of work that you have done on her?

A. For the first four years she was on the coast and also around the bay.

Q. Towing?

A. Yes, sir.

Q. Then what did she do?

A. Worked around the port here.

Q. And she has been doing that sort of work for the past thirteen or fourteen years?

A. Yes, sir.

Q. General towing?

A. Yes, sir.

Q. Did that include the work of assisting steamers to their berths?

A. Yes, sir.

Q. And taking them out of course?

A. Yes, sir; all that work.

Q. Did that also include taking these oil steamers in and out of the Schuylkill?

A. Yes, sir; I have been doing that work for quite a long time now.

Q. You also tow barges?

A. Yes, sir; whatever we get to do in the line of towing around the port here.

Q. How long have you been engaged in transporting steamers up and down the Schuylkill?

A. I have been doing that work off and on for the best part of twenty-five years.

Q. On October 1, 1923, were you master of the tug "Triton?"

A. Yes, sir.

Q. Do you remember the collision that day which your steamer had with scows?

A. I do.

Q. Do you remember assisting the "Gulftrade" up the Schuylkill River to her berth that afternoon?

A. Yes, sir.

Q. What tug was with you?

A. The tug "Churchman."

Q. Where was the "Gulftrade" at the time that you picked her up that day?

A. Opposite Fort Mifflin.

Q. Near those wharves there?

A. Yes, sir.

Q. You took your tug alongside the "Gulftrade" and made fast to her, did you not?

A. Yes, sir; we did.

Q. The "Churchman" did the same thing?

A. Yes, sir.

Q. Where were those two tugs placed after they were made fast alongside?

A. The "Triton" was on the port quarter of the steamer and the "Churchman" on the port bow.

Q. They were both on the same side of the steamer?

A. Yes, sir; they were both made fast on the port side of the steamer.

Q. How was the stern of the "Triton" with respect to the stern of the "Gulftrade;" was it forward or aft or about even with it, would you say?

A. The stern of our tug was about fifteen or twenty feet forward of the stern of the steamer.

Q. After your tug made fast to the steamer what did you do?

A. I went on the steamer.

Q. Where?

A. To her bridge.

Q. Did you then take charge of the navigation of the three vessels in your fleet?

A. Yes, sir.

Q. You were in full charge after that?

A. Yes, sir; and all of the time.

Q. Did the captain of the "Churchman" also come on the bridge of the steamer?

A. He preceded me there.

Q. But he did not give the orders there?

A. No, sir.

Q. And you and he remained on the bridge of the steamer until after the collision?

A. Yes, sir; all of the time.

Q. How was the tide?

A. Flood tide.

Q. While you were going on up the Delaware did you see the tug "Taurus" and the four scows that she was towing?

A. Yes, sir; when we got under way I saw the tug and her four scows.

Q. She was ahead?

A. Yes, sir.

Q. And where was she when you first saw her?

A. At the time that I first saw her and her tow she was about half way between Fort Mifflin docks and the mouth of the Schuylkill.

Q. Proceeding on up there?

A. Yes, sir; I saw her when we went to port.

Q. What was the position of those lighters with respect to the "Taurus?"

A. They seemed to be fairly close up to the tug.

Q. Did they seem to have much freeboard or not?

A. No, sir; those scows were very low in the water; very little freeboard.

Q. As you were proceeding along there were any whistles blown by you?

A. Yes, sir.

Q. What was that?

A. A signal of one blast.

Q. To what vessel?

A. To the tug "Taurus" ahead of us.

Q. Did the tug "Taurus" answer that?

A. Yes, sir; she did.

Q. With what?

A. One whistle.

Q. One blast?

A. Yes, sir; one blast; just the same signal that was blown on the steamer.

Q. It was the "Gulftrade" which blew first?

A. Yes, sir; answered immediately by the tug "Taurus" with a signal of one blast.

Q. Where was the "Taurus" then?

A. I should judge that she was about a quarter of a mile from the mouth of the Schuylkill then.

Q. When you say the "Taurus" you mean the "Taurus" and her tow, do you?

A. Yes, sir; the tug "Taurus" and those four scows that she was towing astern.

Q. How were those four scows arranged, by the way?

A. They were in two tiers, two in front behind the tug, and two astern of the front scows.

Q. Where was the "Gulftrade" at the time that first whistle signal was blown and answered?

A. About half a mile.

Q. From what?

A. She was about a half mile from the mouth of the Schuylkill at that time.

Q. And that would bring her about a quarter of a mile astern of the "Taurus" and her tow then?

A. Yes, sir; I should judge that she was about a quarter of a mile from the tow of the "Taurus" then.

Q. Did you continue to watch the "Taurus" and her tow after that first whistle was blown?

A. Yes, sir; I was standing there on the bridge looking at them all of the time.

Q. How was the weather?

A. It was clear; there was no difficulty in seeing.

Q. Any wind?

A. Not much.

Q. Were the engines of the attending tugs in motion then, or were the engines of the steamer only in motion, when the whistles were blown?

A. The engines of the "Triton" and "Churchman" were not turning over, and the entire power was furnished by the steamer "Gulftrade" then.

Q. You have mentioned about a one-whistle signal you blew to the "Taurus" when she was a quarter of a mile ahead of you and her answer; was there any other signal blown by you after that first one-whistle signal?

A. Yes, sir; there was.

Q. Who blew that?

A. The "Gulftrade."

Q. What signal was that?

A. That was the same signal as was blown before; a signal of one blast.

Q. Was that answered by the "Taurus;" that second signal of one blast by the steamer?

A. Yes, sir; it was.

Q. What did the "Taurus" blow in answer to that signal?

A. She answered with one blast too.

Q. Where would you say that the "Taurus" was then with respect to the buoys at the mouth of the Schuylkill?

A. I should judge that she was about a sixteenth of a mile away then.

Q. Inside or outside of the buoys?

A. Outside.

Q. And about how far would you say that she was ahead of the "Gulftrade" then?

A. I should judge that she was about a quarter of a mile ahead then.

Q. Of the "Gulftrade?"

A. Yes, sir.

Q. Did you see the "Taurus" and her tow go in between the buoys?

A. Yes, sir; I did.

Q. Was the "Gulftrade" following on then?

A. The "Taurus" and her tow were a little on her port bow at that time, I judge.

Q. The "Gulftrade" later came between the buoys?

A. Yes, sir.

Q. Is there anything to mark the course as you go into the Schuylkill there?

A. The ranges.

Q. As you come up there did you come in on the ranges or to the eastward of the ranges or to the westward of the ranges, would you say?

A. As we came along there and got to the mouth of the Schuylkill we were a little to the eastward.

Q. There are two buoys there?

A. Yes, sir.

Q. They mark the entrance to the Schuylkill?

A. Yes, sir.

Q. What color were they?

A. Black and red.

Q. Which buoy did you pass nearer to; the black or the red buoy?

A. The red coming in there.

Q. How near would you say that you were to the red buoy as you came in there?

A. I should estimate that we were about one hundred and fifty feet from it.

Q. On which side did you leave the red buoy as you came in there that day?

A. On our starboard hand.

Q. You have described the first two signals of one blast which were blown by the "Gulftrade" to the "Taurus" and answered by the "Taurus?"

A. Yes, sir.

Q. Were there any other signals blown after the second exchange of signals?

A. Yes, sir; there were.

Q. Who blew?

A. The "Gulftrade" blew a third signal of one blast to the tug and her tow.

Q. Was that answered by the "Taurus?"

A. Yes, sir; it was.

Q. What signal did she blow?

A. She blew a signal of one blast.

Q. How soon did the "Taurus" answer that third one-blast signal of the "Gulftrade?"

A. She answered it immediately.

Q. Where was the steamer "Gulftrade" at the time of those third whistles with respect to the buoys that mark the entrance to the Schuylkill?

A. The steamer was just entering the mouth of the Schuylkill when she blew the third time.

Q. Where was the "Taurus" at that time with respect to the "Gulftrade?"

A. The tug was then about the length of the steamer away then.

Q. Ahead?

A. Yes, sir.

Q. That would be about how much in feet?

A. It would be somewhere in the neighborhood of four hundred feet ahead.

Q. Why did you blow that third signal of one blast to the "Taurus?"

A. I wanted to use all of the precaution that I could to get the "Taurus" and her tow to give us all of the room that she could. He had plenty of chance to give us more room and he was not giving us all of the room that I considered he could safely give us.

Q. To which side?

A. He could have gone over further to the westward than he was at the time.

Q. As a matter of fact at the time that the third whistle signals were exchanged if the tug "Taurus" and her tow had held her course, do you think that the steamer and her tugs would have passed them in safety?

A. Yes, sir; I think we would have passed even then if she had held her course.

Q. In safety?

A. Yes, sir.

Q. You said that you thought that the "Taurus" was not giving you as much room as she could and that is the reason that you blew the third one-blast signal to her?

A. Yes, sir.

Q. She answered that, did she?

A. Yes, sir; she did.

Q. What did the "Taurus" do after that third one whistle signal was blown to her?

A. She sheered across our course.

Q. Which way did she sheer?

A. To starboard.

Q. Is that the first she did after she answered your one-whistle signal?

A. No, sir; she eased off to port first.

Q. That is she went off to port after she answered your third one-whistle signal?

A. Yes, sir.

Q. How much to port did she go?

A. I should judge that it was about a quarter or a half point of the compass.

Q. That was the first thing she did?

A. Yes, sir.

Q. Then what, if anything, did she do after that?

A. Sheered to starboard.

Q. How soon was that after she went to port?

A. Very shortly afterwards.

Q. How much did she sheer to starboard then?

A. It was between two and three points of the compass, I should say.

Q. How did that bring the "Taurus" with respect to the course of the "Gulftrade?"

A. Across the bow.

Q. Of the steamer?

A. Yes, sir.

Q. What effect did that have on the tow of the "Taurus," and the course of the "Gulftrade?"

A. That had the effect on the tow of the "Taurus" of pulling the tow to starboard after he had been pulling it to the port before that.

Q. The "Taurus" then went back to port?

A. Yes, sir; began to swing.

Q. When the "Taurus" started back to port on which bow of the "Gulftrade" was she?

A. She was on the starboard bow of the steamer and the starboard lighter was coming across.

Q. Which lighter was that?

A. That was one of the head lighters in tow of the tug; she came across our bow after the collision.

Q. Did you see the collision between the "Gulftrade" and the scow?

A. I did not see the collision but I seen the lighter come right across our bow after the collision.

Q. That was the No. 18?

A. I could see the lighter coming across but I did not know the number.

Q. You saw the lighter come across your bow?

A. Yes, sir.

Q. Did she get on your starboard bow?

A. Yes, sir.

Q. She came from port to starboard?

A. Exactly.

Q. When you passed that lighter did it pass you on your port or starboard side?

A. That lighter got over to our starboard side.

Q. And you passed it there?

A. Yes, sir.

Q. At the time that you saw it on that side had the lighter turned over yet?

A. No, sir; it had not overturned at the time that I first saw it on the starboard side of the steamer.

Q. Do you know where the steamer hit the lighter?

A. I did not then, I do now.

Q. Did you see the collision?

A. No, sir.

Q. Why not?

A. Because it was directly ahead; the stem of the steamer struck the stern of the lighter two or three feet inside the starboard quarter.

Q. Did you see the lighter turn over?

A. Yes, sir; I did.

Q. Where?

A. About half way between the ship's bridge forward, I should judge.

Q. About how far was the lighter from the ship's bridge when she turned over?

A. I should judge that she was about 125 feet from the bridge at the time.

Q. Did you see this man on the lighter that was capsized on your starboard side?

A. Yes, sir; he was on the forward end of the lighter at the time.

Q. Had she turned over or was she turning then?

A. She was about forty or fifty feet from the ship when she turned over.

Q. And he was on the forward end?

A. Yes, sir.

Q. Did you see the tug "Taurus" when she started this sheer to starboard just before the collision?

A. I was looking at her all of the time.

Q. You saw her then?

A. Yes, sir.

Q. About how far over did she sheer then from the course that she was on?

A. I think that I said that she sheered about three points to starboard.

Q. That was from the course that she had been on previously was it?

A. Yes, sir; to starboard.

Q. Can you give us the distance in feet that she sheered in that time?

A. Well, I should judge that she got off her course about a hundred and fifty feet. Maybe more.

Q. How much more?

A. Anywhere from a hundred and fifty to a hundred and seventy-five feet.

Q. And that was from the course that she was on before she started that sheer to starboard?

A. Exactly.

Q. Did the tow follow?

A. Not as far as she went but they started over to starboard also.

Q. How far did the tow sheer as a result of the sheer of the tug to starboard?

A. About sixty feet. Maybe seventy.

Q. Not as far as the tug?

A. No, sir; about half.

Q. If the "Taurus" had held her course, that is the course that she was on before she took that sheer, and the "Gulftrade" had held her course then, would there have been clearance room for the two tows, and if so what would have been the distance between them in passing?

A. At that time I should say that we would have gone by her sixty to seventy feet.

Q. And you were standing there looking at them all of the time?

A. Yes, sir.

Q. Would that have been a safe clearance in your opinion or not?

A. Yes, sir.

Q. From your experience in taking vessels up there would there have been danger in passing that close?

A. I do not think there would have been any danger in passing that close to them.

Q. Were you in the channel?

A. Yes, sir; we had to keep in the channel there with that deep draft vessel.

Q. As a matter of fact what width of channel did you have for the "Gulftrade" that day?

A. The way that she was loaded we had about two hundred and fifty feet of channel room for her.

Q. What was her draft?

A. She was drawing twenty-seven feet.

Q. What width of channel did the "Taurus" and her tow have at that time, assuming that the draft of the tug and her tow was about ten feet?

A. The "Taurus" had at that point about six hundred feet of channel room.

Q. How much further could the "Taurus" have gone to her port than she was just before she took that sheer to starboard across your course?

A. She could have gone a hundred and fifty feet further to port with safety.

Q. To the western side?

A. Yes, sir; with perfect safety.

Q. Any trouble for her to go over there?

A. None at all.

Q. Would you say, from your experience, that she and her tow could have gone there in safety?

A. Yes ,sir; from my experience I would say that she could have gone at least that much closer to the western bank.

Q. How far towards the western bank would you say that she could have gone with perfect safety?

A. She could have gone to within twenty or twenty-five feet of that bank anyway.

Q. Have you ever been in that vicinity with your tug while towing scows?

A. Yes, sir; I have laid alongside of that bank with the tug "Triton." I do not think there is any danger lying right in there.

Q. How much does the "Triton" draw?

A. Eleven feet.

Q. When you say that the "Taurus" took this sheer to her starboard what if anything did you do on the steamer?

A. Just as soon as I saw that she was making this sheer to her starboard I ordered the engines of the steamer put half-speed ahead and to hard a port her wheel; and to the tugs to come ahead full speed and hard a port.

Q. To whom did you give the order on the steamer?

A. The third mate as to the engines; I think it

was the third mate; I know it was one of her officers there; I am sure it was the third mate.

Q. And to the man at her wheel to hard a port?

A. Yes, sir.

Q. Do you know whether those orders were obeyed?

A. They were, promptly.

Q. You are sure about that?

A. Yes, sir; absolutely.

Q. And the orders to the two tugs were hard a port and come full speed ahead on their engines?

A. Yes, sir.

Q. Did the tugs obey?

A. They did.

Q. Promptly?

A. Yes, sir; right away.

Q. What effect, if any, did that have on the heading of the steamer at that time?

A. That had the tendency of sheering the head of the steamer to starboard.

Q. Did her head go off to starboard?

A. Yes, sir; it did.

Q. How was the "Gulftrade" heading with respect to the center line of the channel before those orders were given to the steamer and her attending tugs?

A. She was heading up the center then.

Q. Was there any other order given by you about then?

A. Yes, sir; after those orders were given and executed, there was.

Q. What orders were they?

A. Full speed astern on the steamer.

Q. What, if any, effect did that have on the heading of the steamer? I mean that last order of full speed astern?

A. With the steamer backing in that way her stern would go off to port and her bow to starboard, and it also stops her headway.

Q. Did it have that effect?

A. Yes, sir.

Q. Did she go off to starboard?

A. Yes, sir; her head did.

Q. Could you see that it had that effect on the "Gulftrade" on this occasion?

A. Yes, sir; I did.

Q. So that as a result of putting your engines half speed ahead and hard a porting the steamer's helm, and hard a porting the helm of the two tugs alongside of her, and going full speed ahead on their engines, and then reversing the steamer's engines, the steamer did go off to starboard?

A. Yes, sir.

Q. That is she sheered to starboard?

A. Yes, sir.

Q. How much would you say that her head went off to starboard as a result of those orders which you say were all promptly executed by the three vessels?

A. Until we finished swinging after the collision, do you mean?

Q. Yes, your whole swing?

A. I should say from half a point to a point anyway; almost a point.

Q. How much would you say that you got her to swing before the collision?

A. From half a point up to a point I should judge before the collision happened.

Q. Where was the point of collision would you say; the best you can locate it?

A. I should judge that it was a little less than two lengths of the steamer inside the mouth of the Schuylkill.

Q. From the buoys?

A. Yes, sir; probably about two lengths or a little less inside the buoys inside the Schuylkill.

Q. Up the Schuylkill?

A. Yes, sir.

Q. On which side of the channel would you put the collision; or was it about the center?

A. I should say that it was very near the center of the channel; near the center.

Q. I assume that you were not paying any attention to the ranges at that time?

A. At the time of the collision I was not paying any attention to them.

Q. Why?

A. Because we were past them.

Q. Had you left the ranges then?

A. Yes, sir; we had stopped running on the ranges.

Q. You use the ranges to enter the Schuylkill, don't you?

A. Yes, sir.

Q. And were you on the ranges in entering?

A. A little to the eastward; we had them open a little to the eastward.

Q. And after you get in a certain distance you leave the ranges, do you?

A. Yes, sir; you don't use the ranges after you get into the Schuylkill.

Q. Did you hear any alarm signals blown by the "Taurus" about the time of the collision.

A. No, sir.

Q. Did she blow any at any time?

A. No, sir; she did not.

Q. Did she blow any other signals than those that you have already testified to?

A. No, sir; the only signals she blew were those three one-blast signals.

Q. Are you positive?

A. Yes, sir.

Q. If there had been any such signals blown would you have heard them?

A. Yes, sir; I would.

Q. I wish that you would tell us why, after putting the engines of the "Gulftrade" half speed ahead and ordering her wheel hard a port, and ordering the tugs full speed ahead and their helms hard a port, you also gave the order to the steamer to go full speed astern?

A. I put the engines full speed astern to stop the ship; to stop her headway, and to stop pushing the lighter over; because I did not think the lighter was going to be sunk; I thought she would hit her a glancing blow and then slide away. I did not think that she would hit the lighter a hard blow and sink her, but hoped that she would strike and glance off.

Q. Then do I understand it was your purpose to avoid doing any damage?

A. Yes, sir; or to try and avoid a serious collision if we could.

Cross-examination.

By Mr. Brown:

XQ. As I understand the first whistle signals were exchanged when the "Gulftrade" got under way?

A. Just a little after that.

XQ. Each vessel blew one blast?

A. Yes, sir.

XQ. Then there was a second exchange of one blast signals, was there?

A. Yes, sir.

XQ. At the time of the second exchange of signals where was the "Gulftrade" with respect to the tug "Taurus" and her tow?

A. About a quarter of a mile away.

XQ. And you were also a quarter of a mile then from the mouth of the Schuylkill?

A. Yes, sir.

XQ. So that at that time the tug and her tow were about at the mouth of the Schuylkill?

A. Just about.

XQ. What speed would you say that the "Gulftrade" and her tugs were making at that time?

A. About three miles an hour.

XQ. Over the ground?

A. Through the water.

XQ. And what do you figure that you were making over the ground at that time?

A. Well, I should judge that we were making about three and a half or three and three-quarters miles then.

XQ. Could you judge of the speed of the "Taurus" and her tow ahead of you then?

A. No, sir.

XQ. Can't give us any estimate of that?

A. I could not estimate just the speed that she was making; I know that she was going a little bit faster than the tide.

XQ. Of course she was not going as fast as you were?

A. No, sir; we were gaining on her all of the time, gaining some anyway.

XQ. You said that the tug "Taurus" and her tow were about entering the mouth of the Schuylkill at the time that the second whistles were blown?

A. Yes, sir; they were just about at the buoys; about entering into the Schuylkill then.

XQ. And you were a quarter of a mile away?

A. About.

XQ. He was then passing in between the buoys?

A. Yes, sir.

XQ. Could you tell at what point in the channel he was passing between the buoys?

A. I could not tell that.

XQ. Could you tell which side he was nearer to?

A. The way I looked at her it seemed that she was going in about on the ranges, and directing his course to the westward a little.

XQ. That was to his port?

A. Yes, sir.

XQ. And that was the position that you place the tug and tow in after the second one-whistle signals were exchanged?

A. Yes, sir.

XQ. You proceeded on up the Delaware towards the entrance to the Schuylkill after that?

A. Yes, sir.

XQ. You changed your course, I presume, in order to get into the Schuylkill?

A. Yes, sir; I hauled in a little more than I was to port to get in there.

XQ. Under what kind of helm; starboard helm?

A. Port helm.

XQ. On the "Gulftrade" when you throw the wheel to port which way does her head go?

A. The same way.

XQ. You came up there under a port wheel rounding into the Schuylkill?

A. Not necessarily under a port wheel, but just enough to get her in there.

XQ. But you have to make a turn at the entrance to get in there, don't you?

A. Not a turn, just swing in like that (illustrating); you just swing in there.

XQ. How was the tide then?

A. Flood.

XQ. How long had it been running?

A. About two hours.

XQ. Is that a pretty strong flood tide?

A. Yes, sir; it was.

XQ. At the entrance to the mouth of the Schuylkill how does the flood tide make; towards the east?

A. Not very strong.

XQ. But with that tendency anyway?

A. Yes, sir; there may be that, but it is not very strong anyway.

XQ. Just outside of the corner how does the tide make; towards the east?

A. Pretty near straight out.

XQ. The Schuylkill?

A. No, sir; the Delaware.

XQ. But just at the place where it flows into the Schuylkill, does it not make to the eastern shore a bit?

A. Oh, maybe it does a little bit, but I would not say that it amounted to much.

XQ. Where did you say that the "Taurus" was at the time that the second one-whistle signals were exchanged?

A. Just entering the mouth of the Schuylkill then or rather getting ready to enter.

XQ. Where was the "Taurus" with respect to the buoys at that time?

A. Just abreast the buoy.

XQ. By that you mean the buoys which mark the entrance to the mouth of the Schuylkill?

A. Yes, sir; she was just about abreast the buoy when she answered our signal.

XQ. You could see her?

A. Yes, sir.

XQ. Were you watching her from the bridge of the steamer to see what she was doing?

A. Yes, sir; she was ahead of us and I was looking to see how she was going.

XQ. Would you say that the tow was just about abreast of the buoy?

A. Yes, sir.

XQ. And, as I understand, the tug was swinging to the westward; is that right?

A. Yes, sir; I would say that she was gradually hauling to the westward then.

XQ. That was to her port?

A. Yes, sir; she was keeping a western heading; that is a little west, as far as I could see; of course you understand that I was not directly in line with the tug at the time that the second signals were blown.

XQ. At that time the "Gulftrade" seemed to be off the port quarter of the tow?

A. The tow was on the port bow of the "Gulftrade" at the time that she was entering there.

XQ. And she was also on the ranges, I think you said, as near as you could place her?

A. Yes, sir; she seemed to me to be about on the ranges then; about in mid-channel.

XQ. Was she coming in on them?

A. Yes, sir. Heading a little west then.

XQ. At the time that the "Gulftrade" got to the mouth of the Schuylkill, did you come in by the ranges?

A. Yes, sir; we used the ranges to get into the Schuylkill, if that is what you mean.

XQ. Did you come in on the ranges?

A. Not exactly on the ranges; no, sir.

XQ. A little bit to the eastward of them?

A. Yes, sir.

XQ. What was your position at the time that the third one-whistle signal was blown by the steamer and answered by the tug "Taurus?"

A. That was just about the time that the ship's bow was getting abreast of the two buoys.

XQ. Which mark the entrance to the mouth of the Schuylkill?

A. Yes, sir.

XQ. Could you see the "Taurus" and her tow at that time, and did you see them?

A. Yes, sir; I did.

XQ. How far was the steamer from the "Taurus" and her tow at that time?

A. I should say that the tug and her tow were about four hundred feet from us then.

XQ. That would be a little less than a ship length away?

A. She was about the length of the "Gulftrade" from us at that time.

XQ. Do you remember your testimony before the United States Local Inspectors?

A. Yes, sir; some of it anyway.

XQ. Do you remember what you said there?

A. Well, that was three years ago and I couldn't remember everything that I said there.

XQ. About how far from the western shore would you say that the "Taurus" was when you blew that third one-whistle signal which she answered?

A. I should judge that she was about two hundred and fifty feet then.

XQ. At the time that the third whistles were exchanged?

A. Yes, sir.

XQ. How far would you say that you were from the western shore at that time?

A. About three hundred and twenty-five feet.

XQ. How far would you say that it was from the western bank to the edge of the channel?

A. Do you mean from the western bank to the center?

XQ. Take it from the western bank to the middle of the channel, if you prefer that?

A. I should say that it would be about four hundred feet in all.

XQ. What do you estimate is the distance between the two buoys there at the mouth?

A. The distance between the red and black buoys there is three hundred and eighty feet about.

XQ. About how far ahead of the tow do you think the "Taurus" was at that time?

A. I don't know that; I understood that it was about a hundred feet though.

XQ. Was that the way that it looked to you?

A. Yes, sir; I would say that was about right.

XQ. After the third one-whistle signals were blown by each vessel did you continue to watch the "Taurus?"

A. Yes, sir.

XQ. And was it, at that time, that you say you saw the "Taurus" hauling to port?

A. Yes, sir; she was.

XQ. How much was that?

A. Well, she was hauling to her port just enough for me to notice it.

XQ. You could tell that she was hauling to the west could you at that time?

A. Yes, sir; I could.

XQ. The scows were astern of her?

A. Yes, sir.

XQ. Did that hauling on the part of the "Taurus" to port affect the scows any?

A. Not much.

XQ. But she pulled them some you say?

A. Very little.

XQ. But would it not have the effect of pulling those scows after her if she went to port?

A. Yes, sir; it would have, if she had kept going on. If she had continued to go to port for any considerable length of time that would have brought them there to.

XQ. It did have some effect though?

A. A little perhaps.

XQ. How long would she have to go off to port before the scows would follow her; any considerable distance, or would they go off immediately?

A. I don't understand that.

XQ. The scows were astern of the "Taurus?"

A. Yes, sir.

XQ. They had been following her?

A. Yes, sir.

XQ. And they were ahead of you?

A. Yes, sir.

XQ. Assuming that the tug went off to port, under a hard astarboard helm, how would that affect the course of the scows astern of her on a hawser?

Mr. Long: I object to the question; there is no evidence that she did anything like that.

A. That would throw the "Taurus" hard a port; that is directly away from the ship. The "Taurus" would go to the westward under a hard astarboard wheel.

XQ. What effect would that have on the tow?

A. That would throw them to the eastward; well along about the width of the tow to the eastward.

XQ. So that when the Taurus" went to starboard under a hard a port wheel, that would throw the

scows to the westward; the tendency would be to throw them to the westward?

A. But if she went to starboard a less time that she went to port it would not have that effect.

XQ. I am not asking you about times; I say the tendency of the "Taurus" going to starboard under a hard a port wheel would be to throw the barges how?

A. That would be to fetch the tug over to the eastward and the barges over to the westward.

XQ. That would be the tendency?

A. Yes, sir.

XQ. Now when you saw the "Taurus" swinging off to her port the third one-whistle signals had been exchanged between the two sets of vessels?

A. Yes, sir.

XQ. And you were watching the "Taurus" and her tow from the bridge to see what she would do?

A. Yes, sir.

XQ. And you were a length away?

A. When they whistled, yes, sir.

XQ. Did you see the "Taurus" when she started what, you call, her sheer to starboard?

A. Yes, sir; I saw that.

XQ. When she started that sheer?

A. Yes, sir; or about the time that she did.

XQ. You saw her make the turn?

A. Yes, sir; of course I was watching her there all of the time, and I noticed that she started to sheer off to the east then.

XQ. How far would you say that the "Gulftrade" was astern of the scows then?

A. I should judge that she was about the length of a lighter from us then.

XQ. That is from the stern barge?

A. Yes, sir; or from the pair of stern scows that were in that tow.

XQ. So that at the time that the "Taurus" made that sheer to starboard the "Gulftrade" was within a lighter's length of the stern barge?

A. Yes, sir.

XQ. That is at the time that the "Taurus" started to make that sheer to starboard?

A. Yes, sir; when she started.

XQ. That would be about a hundred feet?

A. Somewhere about that.

XQ. Those scows were a hundred or a hundred and twenty feet long?

A. Yes, sir; they vary in length but that would be about right.

XQ. Maybe less than that?

A. I think that would be about right.

XQ. And you may have been only seventy-five feet from her at that time?

A. I should judge that we were at least a hundred feet away at that time.

XQ. How far off to the port of the "Gulftrade" were those lighters at the time that the "Taurus" started to make this sheer?

A. I should say that would be about the width of a lighter, perhaps.

XQ. What do you estimate that to be?

A. Oh, I should say that would be anywhere from twenty-five to thirty feet.

XQ. Do you mean twenty-five or thirty feet?

A. Yes, sir.

XQ. To the port of the "Gulftrade?"

A. Yes, sir.

XQ. Let me understand you; do you mean that at the time the "Taurus" started to make that sheer; at the very start of that sheer to starboard, the tow was to the port of the "Gulftrade" only about the width of one of those lighters?

A. Yes, sir; about that as near as I could tell you; just about that.

XQ. That would be twenty-five or thirty feet?

A. Yes, sir; something like that.

XQ. That is not what you said before, is it?

A. I don't remember being asked that before.

XQ. I thought that you said in your direct examination that if the "Taurus" had not made that sheer to starboard, which you say you saw, the "Gulftrade" and her tugs would have passed the "Taurus" and her tow anywhere from sixty to seventy feet away?

A. I did.

XQ. Then why do you say now that it was only twenty-five to thirty feet?

A. Because at that time the "Gulftrade" was not in and the "Taurus" was in and when we got abreast we would have been sixty or seventy feet from her.

XQ. That was after the third whistle signals were blown, when you mean that you said she would pass sixty or seventy feet away?

A. Yes, sir; the way that she was going and the way that we would come along there.

XQ. Did you not also say that the tow was about sixty feet off your port at the time that the "Taurus" started to make that sheer?

A. I don't remember.

XQ. If you said that why do you now follow it up by saying that at the time the "Taurus" sheered the tow was only about twenty-five or thirty feet off?

A. I don't remember saying that.

XQ. If you said it you were mistaken?

A. What you said; what did I say?

XQ. Was it twenty feet or seventy feet that the tow was to the port of the "Gulftrade" at the time

that the "Taurus" started to make that sheer to starboard?

A. I never said anything about its being twenty feet; I did not mention twenty.

XQ. You said the width of the lighter?

A. Yes, sir; I said that it would be about the width of the lighter away.

XQ. That would be about what?

A. About thirty feet.

XQ. Is it thirty or seventy feet?

A. About thirty feet.

XQ. And that was at the time that the "Taurus" sheered off to starboard—started to make that sheer?

A. Yes, sir.

XQ. And if you said it was seventy feet at that time you did not mean it?

A. I don't think that I said that she was seventy feet to the port then.

XQ. About what time was it between the time the "Taurus" started her sheer and the collision?

A. It was a short time.

XQ. About what time would you say; give us your best estimate of the time?

A. I did not have a watch and I could not say whether it was a minute and a half or three minutes; I never looked at anything to give any idea of time; the engine room clock was not near to me.

XQ. It was a very short time?

A. Yes, sir; it was.

XQ. You testified, I believe, that the "Taurus" sheered about three points?

A. I think that I said that she sheered between two and three points.

XQ. How long after the exchange of the third one-blast signals did this sheer take place?

A. I told you that I did not have any clock to go by in giving those times.

XQ. Was it almost immediately?

A. No, sir; it was not immediately.

XQ. Quite a little time?

A. Yes, sir; there was quite a little time elapsed between the two.

XQ. How long would you say it was?

A. I could not say but it was a short time; not so very long. I could only judge that by the time that the ship was making and the distance that the tug was ahead and the time that she was making. We were about the length of the ship when the third signal was blown, and we were seventy-five to a hundred feet from the stern lighter when we noticed the sheer on the part of the tug.

XQ. That was the sheer to starboard?

A. Yes, sir.

XQ. After that she sheered to port again.

A. Yes, sir.

XQ. Was that an abrupt sheer to port?

A. It was a rank sheer to starboard.

XQ. That was the sheer that you saw when you say she sheered from one to two points?

A. Yes, sir.

XQ. How about the port sheer afterwards?

A. She was coming back to port.

XQ. What kind of a sheer was that?

A. That was getting back to port; that threw the lighters to the eastward.

XQ. Did the tug sheer to port before the collision or was it at the time of the collision?

A. He sheered to port a little bit; do you mean when I blew the third time.

XQ. You told us about that; you said that when you blew the third time he started off to port and then you saw him making this sheer to starboard?

A. Yes, sir.

XQ. After that starboard sheer, that sheer of two or three points that you say you saw, did the tug sheer again? I thought you said he came back to port?

A. Yes, sir; he started back to port until he got directly ahead of the "Gulftrade."

XQ. You saw that?

A. Yes, sir; I did.

XQ. Was that immediately prior to the collision, or had the collision taken place then?

A. The collision was about taking place at the time he started back to port.

XQ. It had not occurred then?

A. Not quite; almost.

XQ. Was that about the time that you gave the orders to the "Gulftrade" to go half speed ahead and hard a port her wheel, and the orders to your tugs to go full speed ahead and hard a port that you told us about?

A. It was almost at the same time, the ship was swinging.

XQ. No time between at all practically?

A. As soon as I gave the order and got the ship going to starboard; the signal had been given for half speed and hard a port to the steamer and hard a port and full speed to the tugs, and as soon as that was done, I saw that the tug was swinging back to port.

XQ. When you first saw the "Taurus" going to starboard how far off the western coast of the Schuylkill would you say that she then was?

A. I should judge that she was anywhere from two hundred to two hundred and fifty feet then.

XQ. You could not tell us whether the "Gulftrade" was on the ranges then or not?

A. No, sir; I could not tell whether she was on the light, but I should judge that she was probably about mid-channel then, possibly she might have been, at that time, a little to the eastward of the ranges.

XQ. You can't tell that accurately I presume?

A. I should say that her heading was a little to the eastward of the ranges though.

XQ. That is as near as you can tell?

A. Yes, sir; it is.

XQ. Where do you place the collision?

A. I should say it was about two lengths of the ship inside the buoys.

XQ. That would be somewhere around nine hundred feet up the Schuylkill River?

A. Yes, sir; about that.

XQ. On which side of the channel, if it was on either side, would you say it was?

A. As near as I could estimate it, the collision occurred in about mid-channel.

XQ. I thought that you said it was to one side or the other of mid-channel?

A. No, sir; I don't think that I said that; because I would put it about mid-channel.

XQ. Before you ordered the helm of the "Gulftrade" put hard a port how was she proceeding?

A. Steady.

XQ. Where were you when you ordered the helm of the "Gulftrade" put hard a port?

A. Inside the buoys.

XQ. Just inside?

A. Not just inside; a little way.

XQ. About how far?

A. About the length of the ship.

XQ. Four hundred feet perhaps?

A. Around that I judge.

XQ. Up to that time you had had your wheel steady?

A. Yes, sir; steady.

XQ. I understood you to say that the "Taurus" was towing four heavily laden, deep scows?

A. Yes, sir.

XQ. With very little freeboard?

A. Yes, sir.

XQ. I understood you to say on direct examination that her sheer was fifty or seventy-five feet to starboard or two or three points?

A. Yes, sir.

XQ. And that would change the course of that tow in a few minutes at least sixty to seventy feet?

A. Yes, sir.

XQ. Under the influence of the port helm?

A. Yes, sir; port and starboard; you can swing them that much.

XQ. That is your testimony?

A. Yes, sir.

XQ. Have you ever towed these lighters?

A. Well, I know those lighters; I don't know as I have towed those very lighters.

XQ. You have towed similar lighters?

A. Yes, sir.

XQ. How long was that sheer of two or three points on the part of the "Taurus?"

A. It was a very short time.

XQ. What is your best idea of the time?

A. It was very short because it does not take a long while to sheer a tug if you put the wheel over. They will turn very quick.

XQ. Then the best answer that you can give is that it was a very short time?

A. Yes, sir.

Cross-examination.

By Mr. Dawson:

XQ. You went to the bridge of the "Gulftrade" at the time that she got under way that day?

A. Yes, sir.

XQ. The master of the "Churchman" was there at the same time, was he?

A. Yes, sir.

XQ. But he did not take any part in the management or maneuvering of the vessels?

A. No, sir.

XQ. You were in full charge of the navigation of the "Gulftrade" and her two attending tugs?

A. Yes, sir; I gave all of the orders that were given there that day.

XQ. Were all of those orders obeyed promptly?

A. They were.

XQ. Both on the part of the "Gulftrade" and the two attending tugboats?

A. Yes, sir; all of the orders that were given were promptly and correctly obeyed.

XQ. The "Gulftrade" handled all right, did she?

A. Yes, sir.

XQ. Did the tugs handle all right?

A. Yes, sir; they did.

XQ. Were you troubled by any set of the tide during the navigation of those vessels?

A. No, sir; the tide did not have any effect on the steamer at all.

XQ. Was there any trouble with any eddy as you were proceeding up there from the Delaware to the Schuylkill?

A. No, sir; there was no trouble that I found in handling the steamer at all.

XQ. Did you experience any difficulty in holding the ship on a steady course?

A. No, and any orders that were given to sheer the ship in any direction were promptly obeyed.

XQ. Did the ship answer all right?

A. Yes, sir; there was no trouble at all in handling the ship. She answered every movement of her helm.

XQ. You said something about holding the ship steady?

A. Yes, sir; about steady amidships.

XQ. You were holding her steady amidships until this sheer of the "Taurus" to starboard, I think you said?

A. Yes, sir; I held the ship steady all of the way along there after we got in the Schuylkill until the "Taurus" started that sheer to starboard. If she had held to port then I think that we would have gone along without much trouble if the lines had not parted. The lines parted and the tow got adrift there and that is why we got into them. I thought that we would get along there in safety, maybe just strike a glancing blow and go on by.

XQ. These measures that you took with reference to the "Gulftrade" and her attending tugs were precautionary measures which were taken after the sheer of the "Taurus" to starboard and for the purpose of trying to avoid a collision with the tow of the "Taurus?"

Mr. Brown: Objected to.

A. That is right.

Re-direct examination.

By Mr. Long:

RDQ. I presume that you gave orders as you were going along there how the "Gulftrade" was to be handled?

A. Yes, sir; some were necessary to enter into the Schuylkill, but for the most part she was steady on her course.

RDQ. And certain orders were given after the sheer of the "Taurus" to starboard?

A. Just as she commenced to make that sheer.

RDQ. Those orders were both to the "Gulftrade" and her tugs, as you have already stated?

A. Yes, sir.

RDQ. Did or did not the tugs "Triton" and "Churchman" obey and promptly obey all of the orders that you gave to them with respect to their handling?

A. Yes, sir; they did.

RDQ. There is some testimony to the effect that at this stage of the flood tide an eddy is formed at the mouth of the Schuylkill; is there any such thing there that hinders a vessel such as the "Gulftrade" coming in there?

A. No, sir; I have never had any trouble in getting a ship in there.

Re-cross examination.

By Mr. Brown:

RXQ. Did you see what happened to the last two lighters in the tow after the collision?

A. Only about the one that capsized.

RXQ. I was referring to the 33 on the starboard side and the 44 on the port?

A. No, sir; as I said I only knew about the lighter that turned over then.

RXQ. That was the 18?

A. Yes, sir.

RXQ. Did you see the 44?

A. Not then.

RXQ. Did you see what happened to the 33?

A. The only thing that I did in coming back, as soon as I got the ship to the dock, we tried to give whatever assistance we could to the "Taurus." The "Taurus" had taken care of them at that time and had pushed them over where she wanted them to go.

RXQ. That was after the collision?

A. Yes, sir; it was.

RXQ. At the time of the collision you did not see them?

A. No, sir.

Re-direct examination.

By Mr. Long:

RDQ. About what was the speed of the "Gulftrade?"

A. About three miles through the water.

RDQ. The "Taurus" and her tow were making about what speed?

A. I do not know how much they were making.

FRANK E. GODFREY, having been duly sworn according to law was examined and testified as follows:

By Mr. Long:

Q. How old are you?
A. Forty-two.
Q. Where do you live?
A. 516 N. Paxson Avenue, Philadelphia.
Q. Do you follow the water?
A. Yes, sir; I do.
Q. In what capacity?
A. Engineer.
Q. Do you hold any license from the U. S. Local Inspectors?
A. Yes, sir.
Q. What is that license?
A. Chief engineer 100 tons and first assistant, 500 tons, ocean.
Q. Do you remember the day of the collision between the "Gulftrade" and the tow of the "Taurus" on October 1, 1923?
A. Yes, sir.
Q. Were you on the tug "Triton" at that time?
A. Yes, sir.
Q. In what capacity?
A. Fireman.
Q. Were you on watch that day?
A. Yes, sir.
Q. Were you on duty at the time of the collision?
A. I was, yes, sir.
Q. What time did you come on watch?
A. Twelve o'clock?
Q. Noon of that day?
A. Yes, sir.

Q. How long did you remain on watch?

A. Until six o'clock in the evening.

Q. Do you remember taking the steamer "Gulftrade" up the Schuylkill?

A. Yes, sir.

Q. Where did you get her?

A. Fort Mifflin wharves.

Q. Do you remember your tug and the "Churchman" being made fast to the steamer?

A. Yes, sir.

Q. Where was your tug?

A. On the port quarter.

XQ. Where was the "Churchman?"

A. Ahead of us on the port bow.

XQ. Both tugs were made fast on the port side of the "Gulftrade" were they?

A. Yes, sir; both on the port side.

XQ. You were proceeding up the Delaware and into the Schuylkill River with the "Gulftrade?"

A. Yes, sir; to her dock.

Q. Were you on deck on watch during all of the time that you were proceeding along there?

A. Yes, sir. Some of the time I was.

Q. Where were you standing when you were out on deck there that day?

A. On the port side about amidships between the engine and fireroom.

Q. Did you see the tug "Taurus" and her tow at any time while you were there?

A. Yes, sir; I did.

Q. Where was she?

A. She was out there ahead of us.

Q. Could you see the tow that she had?

A. Yes, sir.

Q. Did you see her first when she was in the Delaware or in the Schuylkill River?

A. In the Delaware.

Q. Did you hear any signals blown?

A. Yes, sir.

Q. By what vessel?

A. By the steamer "Gulftrade."

Q. What was that?

A. One blast on the whistle.

Q. Was it answered?

A. Yes, sir; right away.

Q. By what vessel?

A. The tug "Taurus."

Q. What did she blow?

A. One blast too.

Q. Did you hear any other signals blown after that?

A. Yes, sir; then after a time the "Gulftrade" blew a second time?

Q. What did she blow then?

A. One whistle.

Q. Was that answered?

A. Yes, sir; the "Taurus" answered again with one whistle.

Q. Did you hear any after that?

A. Yes, sir; then the "Gulftrade" blew again one whistle.

Q. Was that the third one-whistle signal blown by the "Gulftrade" that you heard?

A. Yes, sir.

Q. Did you hear the "Taurus" answer that?

A. Yes, sir.

Q. Did you hear any alarm signals or danger signals blown by the tug "Taurus" just before the collision?

A. No, sir; I did not.

Q. Did you hear any other signals blown there except the three signals of one blast blown by the "Gulftrade" and answered by the "Taurus?"

A. No, sir; I did not.

Q. Were you in a position to hear any such signals if they had been blown?

A. Yes, sir; I was on the deck there on the port side where I would have heard them.

Q. If such signals had been blown would you have heard them?

A. Yes, sir; I would have.

Q. Do you remember the third signal of one blast blown by the "Gulftrade?"

A. Yes, sir.

Q. Was that answered by the "Taurus?"

A. Yes, sir; right away.

Q. Were you watching the "Taurus" and her tow as you were proceeding along there?

A. Yes, sir; I was looking there at her.

Q. Did you see the tug "Taurus" and her tow at the time the tug answered that third one-whistle signal blown to her by the "Gulftrade?"

A. Yes, sir.

Q. What, if anything, did you see the "Taurus" do after she answered that third one-whistle signal?

A. I saw her hard a port and then I did not see her until she was on the starboard.

Q. Which way did that throw her head when you say that she hard a ported, I think that was your expression?

A. To starboard.

Q. Did she finally pass out of your sight when she went over that way?

A. Yes, sir; she got so far over that way that I could not see her any more.

Q. Did you see the scows which she was towing?

A. Yes, sir; I saw three barges.

Q. Where were they?

A. They came right alongside of us.

Q. Do you know how many barges the "Taurus" was towing up the Schuylkill that day?

A. There were four.

Q. Had you seen them while she was out there ahead of you?

A. Yes, sir.

Q. How were they arranged?

A. They were in two pairs, two behind the tug and two behind those first two.

Q. On hawsers?

A. Yes, sir.

Q. What happened to the fourth barge; you say that three came alongside of you?

A. That came along on the starboard side of the ship.

Q. Of the "Gulftrade?"

A. Yes, sir.

Q. That was after the collision?

A. Yes, sir.

Q. You said that the "Taurus" passed out of your sight; was there any time when the other lighters passed out of your sight or not?

A. Just this one lighter.

Q. That came down on the starboard side of the steamer?

A. Yes, sir.

Q. Do you know the number of that lighter?

A. No, sir; I do not.

Q. Was that the one that capsized?

A. Yes, sir; it was.

Q. Did you hear any signals or orders given to your tugs just before the collision took place?

A. Yes, sir; I did.

Q. What were they?

A. Full speed ahead and hard a port the wheel.

Q. Do you know whether that order of full speed ahead was obeyed in your engine room?

A. Yes, sir.

Q. As soon as it was given?

A. Yes, sir.

Q. How near did any of those lighters get to your tug when they came down there, as you said, after the collision was over?

A. One of them came near enough to our tug so that you could have jumped aboard of her.

Q. Did you see the length of hawser between the "Taurus" and her tow that day?

A. Yes, sir; I did.

Q. About what was that?

A. About thirty or forty feet it seemed to me; something like that, anyway.

Q. It looked short to you, did it?

A. Yes, sir.

Q. Did any of those scows come into contact with the tug "Triton" or "Churchman?"

A. They came right alongside of us.

Q. Did they have any effect on the "Triton?"

A. No, sir.

Q. Did you see all three of them floating down there?

A. Yes, sir; I did; all three.

Q. Do you know anything about the speed the "Gulftrade" was making when she blew that third signal of one blast to the "Taurus?"

A. She was going very slow all of the time.

Q. At what speed would you say that she was coming from the time you came alongside with your tug down to the time of the collision?

A. I should say about three miles.

Q. Have you had experience in the engine rooms of tugs taking vessels up and down the Schuylkill?

A. Yes, sir.

Q. Large vessels like the "Gulftrade?"

A. Yes, sir

Q. Deep draft vessels?

A. Yes, sir.

Q. How many years have you had that experience?

A. Eleven years; 17 years in fact.

Q. Can you give us any estimate of the rate of speed of the "Taurus" and her tow at the time that the third whistle signals were exchanged?

A. Yes, sir; they were just about moving with the tide; just about as fast as that.

Q. Making a little headway?

A. Yes, sir.

By The Court:

Q. What was the distance between them; how far from the stem of the steamer was the rear end of the after lighter when those third-whistle signals were exchanged?

A. I should judge that it would be a little less than two lengths of the steamer.

By Mr. Long:

Q. A little less than two lengths of the "Gulftrade," do you mean?

A. Yes, sir; when the third whistles were blown.

Q. Assuming that the "Gulftrade" had held her course, when she blew the third one-whistle signal, which was answered by the "Taurus" with a similar signal, and the "Taurus" and her tow had held their course, would you say that the two sets of tows would have passed in safety?

A. Yes, sir; I think that they would.

Q. Within what distance of each do you think that they would have passed under those conditions?

A. Fifty to seventy-five feet.

Cross-examination.

By Mr. Brown:

XQ. You were on watch?
A. Yes, sir.
XQ. Went on watch at noon of that day?
A. Yes, sir.
XQ. As fireman?
A. Yes, sir.
XQ. You were not running the engines?
A. No, sir; and our engines were not put in motion until just before the collision.
XQ. Where was your watch; where were you supposed to stand your watch?
A. In the fireroom.
XQ. But you were on deck?
A. Yes, sir.
XQ. How long did it take you to get up to the "Taurus" and her tow from the time that you saw them until the collision?
A. I don't know how long.
XQ. Half an hour?
A. Yes, sir.
XQ. An hour?
A. I couldn't tell exactly.
XQ. You were on deck all of the time?
A. Yes, sir.
XQ. What were you doing there?
A. Talking to the second engineer.
XQ. He was inside?
A. Yes, sir.
XQ. Which side?
A. Port side.
XQ. That was the side away from the steamer?
A. Yes, sir.

XQ. Your tug was made fast to the port quarter of the steamer, wasn't she?

A. Yes, sir; she was.

XQ. Of course you had nothing to do but stand there and watch the tug and tow and steamer?

A. I was not doing anything particularly there; no, sir.

XQ. And you were watching all of these things which you have described very carefully?

A. Yes, sir.

XQ. Your duties were in the fireroom?

A. Yes, sir.

XQ. Did you observe when your steamer passed in between the buoys?

A. What do you mean by passing in between the buoys?

XQ. Do you know what the buoys were?

A. Yes, sir; do you mean those buoys which are at the mouth of the Schuylkill?

XQ. Yes; do you know when your steamer passed in between those buoys?

A. Yes, sir.

XQ. Had the first, second or third-whistle signals been blown at that time?

A. It was about the time that the third whistles were being blown.

XQ. When she passed between the buoys?

A. Yes, sir; that is right.

XQ. Did you notice the ranges?

A. I know where the ranges are.

XQ. Did you notice the ranges as you were going into the Schuylkill that day?

A. No, sir.

XQ. You did not see them?

A. I could not see them.

XQ. Why not?

A. Because I was not up there in a position where I could see the ranges then.

XQ. But you said that you could see the "Taurus" and her tow easily?

A. Yes, sir; I could.

XQ. Why could you see them when you were not able to see the ranges?

A. Because the tug and her tow were off on my port hand at the time.

XQ. About how far off on your port were they when the third whistle was blown?

A. About two lengths of the ship.

XQ. That is of the "Gulftrade?"

A. Yes, sir; they were off on the port side.

XQ. I asked you how far off on the port side of you they were at the time?

A. They were two lengths away from us and off on the port side of us then. I just saw them right from my port then; on the port.

XQ. Could you tell that the "Taurus" was ahead?

A. Yes, sir.

XQ. You could see the tug?

A. Yes, sir.

XQ. Were the scows following pretty well after the tug at that time?

A. Yes, sir.

XQ. You could see both the tug "Taurus" and her tow on your port side?

A. Yes, sir.

XQ. Did you see the "Taurus" on one side of the tow or the other?

A. Straight ahead.

XQ. How high were the scows?

A. Some were higher than other; they had sand and gravel piled up there.

XQ. From five to ten feet high would you say?

A. Five or six feet I guess.

XQ. You could see over them?

A. Yes, sir.

XQ. See over them and see the "Taurus?"

A. Yes, sir.

XQ. I mean from where you stood?

A. Yes, sir.

XQ. Was the tug "Churchman" which was ahead of you in line with them?

A. No, sir; the "Churchman" was not in line with them either at that time.

XQ. Was the tug "Taurus" to the port of the "Churchman?"

A. Yes, sir.

XQ. And the tow too?

A. Yes, sir.

XQ. Did you see the tug "Taurus" and her tow go to port after the third whistle was blown?

A. No, sir; I did not.

XQ. You did not see that movement?

A. No, sir; I only saw the one sheer.

XQ. You heard the captain of the "Triton" testify to her going to port?

A. Yes, sir.

XQ. You did not notice that?

A. No, sir; I did not.

XQ. At the time that you say that this third whistle was blown how far would you say that you were from the "Taurus" and her tow at that time?

A. About two lengths of the ship.

XQ. The "Gulftrade?"

A. Yes, sir.

XQ. In other words about 900 feet?

A. Something like that.

XQ. How far would you say that the "Taurus" and her tow were from the western bank at that time?

A. I judge 125 feet.

XQ. Could you tell how far your course was to the starboard of her course at that time?

A. No, sir; I could not say that.

XQ. You did not see the ranges?

A. No, sir; I did not.

XQ. How near was the "Gulftrade," if you could see, to the scows before you got any orders to do anything on board of the "Triton?"

A. I never paid any account to anything like that.

XQ. You do not know where the scows were, with respect to the "Gulftrade," at the time that you got the signal to hard a port and go full speed ahead on your engines?

A. I remember being on deck there and seeing the three lighters come alongside on our port side and then after that we went over to starboard; one of those lighters we saw over on the starboard side.

XQ. You testified that there was an order given to the "Triton" did you not?

A. Yes, sir.

XQ. Where were the scows, if you know, at the time that order was given?

A. Right to the bluff of the steamer then.

XQ. Right on the bluff of her bow at that time?

A. Yes, sir.

XQ. And that was about the time that you lost sight of the "Taurus?"

A. Yes, sir.

By Mr. Dawson:

XQ. You said that you saw the "Taurus" make only one sheer; which way was that?

A. To starboard.

XQ. To her starboard?

A. Yes, sir.

By Mr. Brown:

XQ. How long was that before the collision?
A. Less than five minutes.
XQ. Just a moment before?
A. Just a very short time.
XQ. Was that about the time that you got the order to go full speed ahead on your engines?
A. It was just before that order.

Mr. Long: I have another witness, who is on ms way here, but as it is now after five o'clock, I will, by agreement of opposing counsel, take his deposition within a few days.

ADJOURNED.

PROOFS FOR S. S. "GULFTRADE" AND GULF REFINING COMPANY, INC.

Mr. Dawson: I offer in evidence the following in behalf of the S. S. "Gulftrade" and Gulf Refining Company, Inc.:

Deposition of William A Parta, Chief Officer of the S. S. "Gulftrade," taken by agreement on December 13, 1924, and the several exhibits therein mentioned.

Depositions of Charles G. Carlson, Master of S. S. "Gulftrade,' 'and W. E. Cowart, First Assistant Engineer of S. S. "Gulftrade," taken by agreement on January 22, 1925, and the several exhibits therein mentioned.

Deposition of William James Hassell, Third Officer of the S. S. "Gulftrade," taken by agreement on February 9, 1925, and the exhibit therein mentioned.

In hastily checking over the several exhibits mentioned in those depositions, I find that three of them are not in our possession at the moment, but I will have them looked up promptly. I think it likely that opposing counsel have two of them as I note they were marked for identification on their cross-examination.

I agree, of course, that all objections noted in those depositions may be treated as renewed at this time and may be passed upon by the Court at its convenience.

Continuation of testimony on behalf of the steam tug "Triton," Independent Pier Company; steam tug "Churchman," and Alfred C. Churchman.

Meeting held at the office of HOWARD M. LONG, ESQ., Packard Building, Philadelphia, Pennsylvania, on Tuesday, October 12, 1926, at three-thirty P. M. promptly. The testimony is taken under the stipulation heretofore made.

PRESENT:

EVERETT H. BROWN, JR., ESQ., for the libellant; H. ALAN DAWSON, ESQ., for the S. S. "Gulftrade" and Gulf Refining Company, Inc.

HOWARD M. LONG, ESQ., for the steam tug "Triton," Independent Pier Company; steam tug "Churchman," and Alfred C. Churchman.

OSCAR WILMER, having been duly sworn according to law was examined and testified as follows:

By Mr. Long:

Q. Where do you live?
A. 220 Maple Avenue, Lansdowne, Pa.
Q. How old are you?
A. Thirty-four.
Q. Do you follow the water?
A. Yes, sir.
Q. What license do you hold?
A. First-class pilot's license from Trenton to the Delaware Capes, Chesapeake Bay from its head to Baltimore, and master on bays, rivers and sounds.
Q. How long have you held that license?
A. Since 1917, I think.
Q. By whom are you employed at the present time?

A. The Atlantic Refining Company.

Q. How long have you worked for them?

A. Around eight or nine years.

Q. As master of tugboats?

A. Yes, sir; for the past six or seven years; seven years I think it is now.

Q. Your work has been principally what?

A. Hauling ships in and out of the Schuylkill River; going in and out there with steamers.

Q. What sort of ships principally?

A. Almost entirely oil tankers.

Q. And of what size?

A. They average from three hundred and eighty-five to five hundred and forty feet long.

Q. What depth?

A. Anywhere from a light eighteen-foot boat until they get as much as thirty-one feet.

Q. Have you been continuously engaged in that work for the past six or seven years?

A. Yes, sir; except for a couple of periods of two or three weeks when strikes were on.

Q. Harbor strikes?

A. Yes, sir.

Q. Those are ships belonging to the Atlantic Refining Company and other oil companies?

A. Yes, sir.

Q. Different nationalities coming there to Point Breeze?

A. Yes, sir; English, German, Swedish, Norwegian, and in fact every flag you can think of.

Q. Also United States?

A. Yes, sir.

Q. How long did you say that you had been engaged in doing that kind of work?

A. Somewhere about six years.

Q. With what tug are you connected at the present time?

A. The "Vandyke" No. 2 Diesel engines.

Q. She belongs to the Atlantic Refining Company, does she?

A. Yes, sir.

Q. Have you any connection with the Gulf Refining Company?

A. No, sir.

Q. Ever have?

A. None at all.

Q. Were you ever employed by the Independent Pier Company or connected with the tug "Triton?"

A. No, sir; never.

Q. Did you ever have any connection with the tug "Churchman" or her owners?

A. No, sir; none at all.

Q. Do you know the S. S. "Gulftrade?"

A. Yes, sir, I do.

Q. Have you frequently seen that steamer?

A. Yes, sir; I have seen her quite often coming in and out of the Schuylkill and down there at her berth.

Q. Captain, coming into the Schuylkill River, after the tide has been running flood for two or three hours, what is the usual strength of the flood tide?

A. That varies a great deal.

Q. In what way?

A. Well, sometimes it is nothing and then again you will find it a mile an hour. You can never predict from day to another just what it will be. I have seen it when it amounts to nothing and then again it will be as much as a mile an hour.

Q. Why is that; how do you account for that variation in the strength of that flood tide?

A. The only way that I can account for it is on account of that Fairmount Dam. That dam will sometimes have the effect of slowing it down. It will run up there for half an hour and then stop dead still and then perhaps it will come back again later.

Q. Can you gauge that?

A. No, sir; there is no man that I know of who can tell what it will be after it has run three hours flood.

Q. It may be anything from practically nothing to a mile an hour?

A. Yes, sir; no tide at all sometimes and sometimes up to a mile perhaps.

Q. As a matter of fact does the flood tide running three hours run with very much velocity?

A. No, sir; after one hour's flood you will not find it running very strong there.

Q. At any time, I mean?

A. No, sir; you will not find the flood tide after one hour very strong there.

Q. In bringing a ship into the Schuylkill from the Delaware River, the ship drawing twenty-seven feet of water, what do you have to guide you into the channel?

A. When you are coming from the Delaware into the Schuylkill River you have the ranges.

Q. Where are those ranges?

A. Set on the end of League Island shore; they mark the entrance there.

Q. Is there anything else?

A. Yes, sir; there are two buoys which you pass by in entering there.

Q. How do you pass the buoys?

A. You go between them, of course.

Q. What buoys are they?

A. There is a black spar buoy and a red nun buoy.

Q. Where are those buoys; which one is the lower buoy on the port side and which on the starboard side?

A. The black buoy is on the port side about seventy-five feet from the end of the jetty.

Q. Where is the red buoy?

A. The red buoy is about three hundred and seventy-five or four hundred feet right straight across from her.

Q. On which side of the channel coming up?

A. On the starboard side coming up.

Q. How wide a channel do you have to navigate with a steamer drawing twenty-seven feet of water, when the tide has been running flood for two or three hours, after you get the steamer inside those buoys?

A. The center line right there in the middle of the channel is the best; right in mid-channel and you can vary from that two hundred feet.

Q. Do you mean two hundred feet on each side of that center line?

A. No, sir; a hundred feet on each side; there is a dead center line coming up there.

Q. Assume that you are coming up from Fort Mifflin into the Schuylkill with that steamer, and with the tide running flood for two or three hours, what effect, if any, does that tide have on your steamer before you get past these buoys?

A. It goes up the river; sets right up there; sets the ship up the river.

By Mr. Brown:

Q. Up the Schuylkill?

A. No, sir; up the Delaware from League Island.

By Mr. Long:

Q. After you get inside the buoys which way is the tide or which way does your vessel tend to go; to port or to starboard?

A Always to the starboard.

Q. Why is that?

A. Because the western bank is the shoallest.

Q. That is your port bank?

A. Yes, sir.

Q. Why is it that the western bank being the shoallest the steamer tends to go to starboard?

A. Because they always sheer for deep water.

Q. Has that been your experience?

A. Yes, sir; always.

Q. Do you know whether or not the conditions which you have told us about existed there in the fall of 1923?

A. Yes, sir; about the same.

Q. In September or October of that year they were about the same as now?

A. Yes, sir; they were.

Q. To your knowledge how long have those conditions existed there?

A. They dug out there about five years ago or something like that, and ever since that the same condition has existed except in the spring of the year when they have to do some digging around there.

Q. The government does that?

A. Yes, sir; so as to put it in the same condition as it was five years ago when it was dug out originally.

Q. Did you witness the collision between the S. S. "Gulftrade" and some sand scows in tow of the tug "Taurus" on October 1, 1923?

A. No, sir.

Q. Were you down the river that day about three o'clock when the collision occurred; do you know anything about the collision at all?

A. I passed up there but I do not know how long it was after the collision. I was around there that day but not at the time the collision took place.

Q. Did you go up or down the river?
A. I think that I went down, come to think of it.
Q. Did you see any of those scows?

Mr. Brown: Objected to as incompetent, immaterial and irrelevant; the collision was over then.

A. I saw the tug tending to one over there on the eastern side.
Q. What time was that?
A. That was the same afternoon as the collision.
Q. Have you ever made any soundings in this channel?
A. Yes, sir.
Q. Have you made any soundings in that locality recently?
A. Yes, sir; I did that on purpose because I wanted to be able to tell what I knew about it and not what I thought it was or guessed about it.
Q. You knew that you were going to testify here today?
A. Yes, sir.
Q. As a matter of fact it was arranged that you should be in court before Judge Dickinson last Friday?
A. Yes, sir; I was late.
Q. You did not get here until court had adjourned?
A. That is right.
Q. Knowing that you were going to testify here today I understand that you made some soundings so as to be sure your testimony would be accurate?
A. Yes, sir.
Q. When did you make those soundings?
A. Saturday morning last.
Q. At what time?
A. Around ten o'clock; low water.

Q. Is this a record of the soundings that you made? (Showing paper to witness.)

A. Yes, sir.

Mr. Long: I will ask that paper be marked for identification "Triton" & "Churchman" No. 1, October 12, 1926.

By Mr. Brown:

Q. Is that the original one?

A. Made from a paper I made up; copied.

Q. Did you make that yourself?

A. Every bit of it; I made up a paper with the figures on and then made up this paper from that.

By Mr. Long:

Q. How did you make those soundings?

A. I ran right up and put the bow of the tug alongside the shore as near as she would go, and then sounded off the bow; our boat is ninety-eight feet six long and then I took soundings to the stern; then dropped back with the bow where the stern had been and started all over again.

Q. Then after you had sounded the length of the tug you would move her back?

A. Yes, sir; move the tug back and sound again in the same way, and then do it again.

Q. Did you make a record of the soundings that you took there in this way?

A. Yes, sir; I had a paper drawn up so as to set down the record that I made.

Q. And you did that, as you have stated, for the purpose of testifying here today?

A. Yes, sir; when I got up here and was asked about the depths I wanted to have something to go

by and not have to say "I think so" or "I guess this or that." In other words if any one wants to go down there and take soundings I think that they will find the figures on this paper will speak about the same as theirs do.

Q. How near to the buoys did you start?

A. Right at the buoys.

Q. About how far up the river did you go?

A. About a thousand feet.

Q. What did you have to guide you at the up-river end of your soundings?

A. There is a government cable crossing there; you will notice telegraph poles along the bank.

Q. Would you say that was about a thousand feet above the black buoy?

A. Yes, sir.

Q. These soundings were taken at dead low water you said?

A. Yes, sir; they were.

Q. How much would these depths be increased if taken at a time when the tide had been running flood for two to three hours?

A. I should say that would be anywhere from three and a half to four feet.

Q. That would account for the rise of the tide would it?

A. Yes, sir; of course you know that it varies somewhat with the wind.

Q. Was there any wind on Saturday morning last when you made these soundings?

A. Very little; to the west. Sometimes it will raise a foot or more with a southeast or south wind; with a north or northwest wind it would not raise over three feet some days.

Q. It rises more with the wind to the south or east do you say?

A. Yes, sir.

Q. Then more water is blown into the river?
A. Yes, sir; from the capes.
Q. Do you know the tug "Taurus?"
A. Yes, sir; I do.
Q. Do you frequently see her?
A. Yes, sir; I see her almost every day.
Q. Do you know the sand scows she tows?
A. No, sir; I know about what they are, but I do not know what she had that day.
Q. Have you seen her towing sand scows?
A. Yes, sir; sand and gravel.
Q. How close to the western bank of the river would a vessel drawing ten feet be able to go assuming that the tide had been running flood two or three hours?

Mr. Brown: Objected to for the reason that the soundings which this witness made were made on last Saturday, and were therefore made more than three years after the day of this collision.

Mr. Long: The witness has already stated that he has had knowledge of the conditions existing there for the past six years, and that although the soundings were taken last Saturday, the conditions today are the same as the conditions three years ago.

A. Within seventy-five feet of the bank.
Q. For what distance?
A. From the black buoy up there for a thousand feet and then he would have to come out two or three hundred feet.
Q. How close to the western bank could a steamer drawing twenty-seven feet of water go, say as of October 1, 1923?
A. That would be about the same as today.

Q. What would it be?

A. She could not get any closer than two hundred feet of that anyway.

Q. Has that been true during the time that you have known this locality?

A. Yes, sir; within the past five years.

Q. What would have happened if she had tried to get closer than that?

A. She would have sucked bottom and then sheered for the eastern bank.

Q. Why?

A. Because vessels sheer for the deeper water and the deeper water was on the eastern bank.

Q. The deeper water was along the eastern bank?

A. Yes, sir.

Q. With a tug like the "Taurus" navigating on October 1, 1923, in the Schuylkill, when the flood tide was running up two or three hours, and assuming that the tug with her tow was navigating not over a hundred feet from the western bank, would it have been possible for a vessel drawing twenty-seven feet of water to get into her or her scows?

A. No, sir; I do not think that it would have been possible for that steamer to have gotten there.

Q. Would she have been able to get within a hundred and fifty feet of that west bank?

A. No, sir; I do not think that she would have got that close to it even.

Q. Why not?

A. I do not think it would have been possible for her to have got in that shoal water where the tug and her tow were.

Q. Would there have been enough depth of water for her to have got in there without going ashore?

A. I doubt it.

Q. Take your soundings and tell us how close to the western bank a steamer drawing twenty-seven

feet of water could have gone with the flood tide running two or three hours?

Mr. Brown: Objected to as incompetent, immaterial and irrelevant as the soundings referred to were made more than three years after the collision.

A. Well, you would have to add four feet?
Q. That is for the rise of the tide?
A. Yes, sir.
Q. What is your answer?
A. She would not be able to come within a hundred and seventy-five feet of the jetty.
Q. And for what distance from the black buoy up the river would that condition prevail?

Mr. Brown: Note the same objection.

A. A thousand feet.
Q. I suppose that you have been navigating up and down there in the Schuylkill almost every day?
A. Yes, sir; I am in there almost every day and sometimes three or four times.
Q. Would you say that there had been any change in those depths as recorded by you since October 1, 1923, down to the time you made them?
A. No, sir.
Q. That is down to October 9, 1923?
A. No, sir; as I said before there is a little change in the spring and they adjust that right away. The government or city gets to work and dredges out there so that it will be the same as when they dug it originally.
Q. That work is done each year?
A. Yes, sir; and that is about the ice dam too.
Q. Where is that?

A. That is about half-way between Yankee Point and Penrose Ferry Bridge.

Q. That is considerably up the river from the location that we have been talking about?

A. Yes, sir.

Q. Does it fill up to amount to anything between the mouth of the Schuylkill and this point one thousand feet up where the cable crossing is?

A. No, sir.

Q. Is it your business to know the depth of water in this vicinity?

A. Yes, sir; it is and I have made soundings there and have them in the office, I think.

Q. When did you make them?

A. Off and on for the past five years when I have been working around the Schuylkill.

Q. Can you locate those soundings?

A. It is possible that I can.

Q. Will you try and do so?

A. Yes, sir.

Q. You have seen the "Taurus" towing lighters loaded with sand and gravel going up the Schuylkill, have you?

A. Yes, sir.

Q. Have you noticed what effect, if any, the flood tide has upon sand scows in tow of a tug when entering the Schuylkill River?

A. That would always cut them up the same way as it cuts the ship.

Q. To which side is that?

A. To the starboard, up the Delaware River.

Q. How long does that condition continue?

A. Until they got past the buoys.

Q. Have you observed the "Taurus" towing four loaded sand and gravel scows up the river?

Mr. Brown: Objected to as incompetent, immaterial and irrelevant.

A. Yes, sir.
Q. Frequently?

Mr. Brown: Same objection.

A. Yes, sir; quite frequently.
Q. What have you to say as to the power and ability of the tug "Taurus" to properly control and handle a tow of four loaded sand scows entering into the Schuylkill River under the condition of the flood tide running up two or three hours?

Mr. Brown: Objected to as incompetent, immaterial and irrelevant.

A. Well, you know there is always a kind of joke expression that they have and I have always made the remark that she goes along the way that she is carried.
Q. What do you mean by that?

Mr. Brown: Same objection.

A. That she goes wherever the tide carries her.
Q. What have you to say as to the power and ability of the "Taurus" to properly control and handle the scows under the conditions I have given?

Mr. Brown: Same objection.

A. That is not up to me to say. I have nothing to do with that.
Q. Captain, what changes have occurred in these waters during the past six years?

A. What waters?

Q. Where you have sounded; the waters to which your soundings here refer to?

A. None there. They have dug in the channel but this is on the edge of the channel.

Q. Captain, will you mark on this plan that you made and which contain the result of your soundings, where they have dug out in the spring; will you mark out the limits there on each side?

Mr. Brown: Objected to.

A. They are supposed to dig there for a distance of two hundred and fifty or two hundred and seventy-five feet, but they dug the eastern portion and did not finish the western portion, and while they may claim they did I know that they did not.

Mr. Brown: Objected to as not responsive to the question.

Q. Will you take this ruler and mark the lines between which they do that digging and have done it within the past five years?

A. Yes, sir. (The witness does so.)

Q. Captain, just what do those dotted lines represent which I asked you to make on your plan?

A. That represents the ship-channel for vessels drawing twenty-seven feet or over.

Q. Between those dotted lines?

A. Yes, sir.

Q. With reference to those two dotted lines where is it that they do the dredging?

A. Right in between there. (Indicating.) They dredged out the eastern side first and never finished the western side although they started to finish it.

They claim they did and I claim that they didn't. I don't know why they didn't.

Q. Is or is not the portion between those dotted lines the main ship channel?

Mr. Brown: Same objection.

A. Yes, sir.

Q. And that is where all of the dredging was done?

A. Yes, sir.

Q. They did not dredge outside of the dotted lines that you put down here?

Mr. Brown: Same objection.

A. No, sir.

Q. And all their dredging was outside the figures you have down?

Mr. Brown: Same objection.

A. Yes, sir.

Mr. Long: I offer in evidence the paper made by the witness containing his soundings, and with the other representations thereon, heretofore marked for identification and ask that the same be marked "Triton & Churchman" Exhibit No. 1, October 12, 1926.

Mr. Brown: Objected to as incompetent, immaterial and irrelevant. These soundings were made 3 years before the collision.

Cross-examination.

Mr. Brown: I will ask Mr. Dawson to cross-examine the witness now.

Mr. Dawson: I have no questions to ask at this time as no testimony has been brought out, in my judgment, in direct examination, adversely affecting my clients.

Mr. Long: In reply to Mr. Brown's objection regarding the time of the making of these soundings I beg to call attention to the fact that as the witness has testified there is no change today in the waters where his soundings were from what they were on October 1, 1923, the soundings made by him, as shown on this paper are material and relevant.

By Mr. Brown: I will cross-examine subject to the objections heretofore made, and which I do not waive.

XQ. This paper which has been introduced into evidence, and which you have made up to show certain soundings made in the Schuylkill from the black buoy to the cable crossing, shows a cross here (indicating) which marks the black buoy at the entrance of the channel?

A. Yes, sir.

XQ. And you have placed that black buoy at the entrance to the channel well inside of the line of the ship channel?

A. Yes, sir; where it belongs.

XQ. As you have placed it on this paper you say that it belongs well inside of the line of the ship channel?

A. Where it belongs.

XQ. Answer the question; you have put that black buoy well inside of the line of the ship channel?

A. That is inside of the axis of the ship channel, where deep draft ships can go. Tugs go in that deep channel too.

XQ. Look at this line which I would call to the westward of the ship channel and which I will mark with an X. Is that supposed to be the axis of the ship channel or the western side of it?

A. Western side.

XQ. Then you put the black buoy well inside of the western side of the ship channel?

A. Yes, sir; I would say a hundred feet according to my markings. I think you will find that if you center those two lines.

XQ. I show you U. S. C. and G. S. Chart No. 381 showing the entrance to the Schuylkill River, you, as a licensed man, are accustomed to read those charts?

A. Yes, sir.

XQ. Will you tell me whether the black buoy on this government chart is placed inside or outside of the original regular ship channel there?

A. Outside. Just outside.

XQ. You say the black buoy is to the westward of the ship channel?

A. The ship channel is east.

XQ. Will you kindly mark, indicating by a mark, where you think the western edge of the ship channel comes on the chart?

A. Right here. (Indicating.)

XQ. Will you put your initials right alongside of that mark to indicate it?

A. Yes, sir. (The witness does so.)

XQ. And the place where you have drawn a line and initialed it, is your idea of the western side of the ship channel; that is it?

A. Yes, sir; for vessels drawing twenty-seven feet or over; I am not talking for the channel for tugs.

XQ. What do you regard lines to the west as marked on the chart or to the east as representing? (Indicating.)

A. Where light draft vessels can go.

XQ. Have you made soundings from the center of the ship channel out to the edge of the ship channel as indicated on the chart?

A. No, sir; we came out two hundred and fifty feet from shore. I have sounded there.

XQ. But you did not now?

A. No, sir.

XQ. So that you can't tell us now the depth at the black buoy, can you?

A. I can tell you close to it.

XQ. You can't tell from soundings?

A. No, sir; but it is close to 18 feet.

XQ. But you did not sound there?

A. I sounded within fifty feet of there above it and on a direct line with it; direct shore line.

XQ. Did that line run in towards shore or follow the line of the ranges?

A. Right straight up shore.

XQ. Parallel with the shore?

A. Yes, sir. Exactly.

XQ. But you did not sound around the black buoy?

A. No, sir.

XQ. The mark that you have indicated there is what?

A. That is the western side of the twenty-seven foot or deep-draft channel.

XQ. You have not drawn that to a scale?

A. No, sir.

XQ. That is approximately on the ranges?

A. Over perhaps fifty feet.

XQ. Yet you have testified heretofore that the channel extended to one hundred feet either side of the mid-channel line?

A. That is inside that buoy.

XQ. Where is that 100 feet that you testified to?

A. Anywhere from 250 to 300 feet inside.

XQ. So that the channel becomes wider there for deep-draft vessels?

A. Yes, sir.

XQ. You did not draw this diagram to a scale?

A. No, sir, I did not plan it by scale.

XQ. Does the heavy line here (indicating) indicate the shore line?

A. That is the jetty (indicating) and it is the shore line on high water and not on low water.

XQ. Because the tide flows out to the western bank?

A. Yes, sir; and here is the low water shore line that I have indicated here. (Illustrating.)

XQ. Now then, as I take it, this line marked X shown to the westward of the line marked 100 feet by you is approximately mid-channel for vessels drawing twenty-seven feet?

A. Right exactly between the two buoys is mid-channel, and with the ranges exactly on.

XQ. Will you kindly indicate that on this diagram?

A. Let me have your chart here. Here, right on the axes of these lines is the ship channel, right between the two buoys; that is as near the middle as I can get it, and the further you go up the further it goes to the east.

By Mr. Long:

XQ. Which way?

A. To the east; here it is right on the chart.

By Mr. Brown:

XQ. With regard to these dredging operations that you have mentioned; how long, at one time, have you observed the dredging being done?

A. In what spot?

XQ. In any of the spots inside of the buoy up the Schuylkill, with regard to which you have testified?

A. All over the Schuylkill they dug practically all last year, but down here where I mean they dug somewhere around a month.

XQ. That was last year when they took away the eastern bank?

A. No, sir; the eastern section of the channel.

XQ. What do you mean?

A. From here (indicating); they cut a slice away from here and worked around there.

XQ. Have you sounded in the channel recently?

A. I think about six months ago.

XQ. Have you a record of those soundings?

A. I think so.

XQ. You can't get them now?

A. No, sir.

XQ. So that you are not prepared to testify as to the depth in the channel at any particular time?

A. Well, if you bring a twenty-eight or twenty-nine foot ship up there you have to know about where you are going.

XQ. Have you ever hit bottom?

A. Every place up there I have hit bottom.

XQ. When was that?

A. Within the last six years I have struck the side of the bank and every spot in the Schuylkill.

XQ. Ever hit the eastern side of the bank?

A. Yes, sir.

XQ. Ever hit the western side?

A. Yes, sir; all sides.

XQ. Under what circumstances did you go ashore on the western side?

A. Got in by the buoy and had to back off it and then started inside about a hundred feet and then got right in there a hundred and fifty feet off shore. (Indicating.)

XQ. You are now indicating which shore?

A. The western shore; right along here. (Indicating.)

XQ. What stage of the tide was it?

A. Flood tide.

XQ. What ship was it, do you remember?

A. I don't know. I will recall the name.

XQ. Was it a tanker?

A. Yes, sir.

XQ. How large was it?

A. 517 feet long.

XQ. What tugs were there?

A. The "Alert," the "Arabic," and another which I do not remember now.

By Mr. Long:

XQ. Were you on the tug or on the steamer's bridge?

A. I was on the tug.

By Mr. Brown:

XQ. You have testified about the flood tide; how long after the tide begins to run flood at the buoys, does it run up the Schuylkill River under ordinary conditions?

A. About three-quarters of an hour to an hour; what we call the first flood.

XQ. No longer?

A. No, sir.

XQ. After that there is no flood tide only inside the buoys?

A. Practically none; sometimes a little bit.

XQ. That is inside the red buoy?

A. Yes, sir.

XQ. So that when the tide begins to flood at a point indicated by the buoys there is only a total record of any force of the tide for three-quarters of an hour to an hour?

A. Yes, sir; depending upon the wind.

XQ. If the wind is blowing in strong it would be longer and if not blowing in strong it would be three-quarters of an hour?

A. Or an hour.

XQ. During that tide is the tide stronger on the eastern than on the western side?

A. It is the same on both after you get up the Schuylkill River.

XQ. Is it not true that the tide comes up the channel naturally stronger to the eastward side and it has less force along the western shore?

A. That is true.

XQ. Then it does not flow up with equal force on either side?

A. It does after you get in up to here. (Indicating flats inside the red buoy.)

XQ. You are indicating flats over there?

A. Yes, sir; which are approximately three or four feet under water on the flood tide.

XQ. Once you get inside the channel does not the tide run a little stronger anyway on the eastern than on the western side?

A. Right to about here. (Indicating on the chart.)

XQ. Indicate that with this pencil?

A. Yes, sir. (Indicating by a line on the chart and initialing it.) From there on up it is the same as far as I have seen it.

XQ. I presume in the government dredging operations they don't bother to dredge except where it has filled up within the channel lines?

A. That is all.

XQ. Between the channel line and the shore they don't dredge, do they?

A. No, sir.

XQ. I suppose that there is a collection of silt, mud and dirt that comes in there from time to time?

A. I do not know just what it is, but I guess something like that happens.

XQ. How far is this cable crossing inside the buoy?

A. About a thousand feet, although I never measured it.

XQ. Do you know the horse-power of the "Taurus?"

A. No, sir.

XQ. Do you know the scows that were in tow of that tug at the time of the collision?

A. No, sir; I don't know the numbers but they are similar to scows that I have seen her with.

XQ. Do you know what cargo they had at this time?

A. No, sir; except that they usually carry sand and gravel.

XQ. Do you know how much cargo approximately each and all of them had?

A. No, sir.

XQ. You do not know what cargo they had at the time you said the "Taurus" couldn't control them?

A. Nothing more than sand and gravel.

XQ. And you don't know how much?

A. No, sir; I don't know.

XQ. Just outside the red and black buoys how long after the flood tide begins to make is its force felt as it makes up the Delaware River?

A. Right along some until slack water; to some extent until it gets ready to turn.

XQ. How many hours is that?

A. Five hours.

XQ. Is the force of the tide making up the Delaware fairly strong in there?

A. Yes, sir.

XQ. What is the usual rate of speed?

A. A little over a mile an hour.

XQ. And as soon as you get inside the line of the buoys you cease to feel the effect of that tide?

A. Yes, sir.

XQ. On this paper which has been offered in evidence and on which you reported your soundings, does the space between the first column of figures commencing with the figure 17 and the second column of figures commencing at the figure 11, represent any specific distance in the river?

A. No, sir; I only divided them up into five distinct parts there.

By Mr. Long:

XQ. For a total distance of how much?

A. One thousand feet.

By Mr. Brown:

XQ. Can you tell whether the column beginning with 17, being the first from the left-hand side of the paper which has been offered in evidence, represents depths at any particular place inside the buoys?

A. That is about 150 feet inside the black buoy.

XQ. That is only approximate?

A. Yes, sir.

XQ. You didn't measure the exact distance between the black buoy and where you sounded shown in that first column?

A. No, sir; not the exact distance; only approximately.

XQ. You didn't measure between the second and third?

A. No, sir.

XQ. Nor the first and second?

A. Between none of them.

XQ. Nor between the third and fourth, or fourth and fifth?

A. No, sir.

XQ. Did you actually measure the distance from the low water line out 100 feet as you have indicated on this paper?

A. Yes, sir; about as near as I could measure it without actually putting a tape to it. You see the boat is 98.6 and that gives you about a hundred feet.

XQ. You only sounded 100 feet from low water line?

A. That is right.

XQ. That was the distance the tug was from the shore and you took soundings over the stern of the tug?

A. Yes, sir.

XQ. You did not take any soundings to the 200-foot mark on your set of soundings inside the buoy?

A. No, sir.

XQ. Referring to the fourth set of figures from the left-hand side of the paper, is it not true that the ship channel there makes more to the westward side of the shore?

A. No, sir; to the east.

XQ. Does it not widen there and make to the westward?

A. No, sir; there is a mud bank there; it makes to the eastward if anything.

XQ. So at that point any vessel following the ship channel would have to make to the eastward?

A. No, sir; 150 to 200 feet from shore would be the axis of the ship channel.

XQ. Do you know the beam of the "Gulftrade?"

A. About fifty-six feet, I should say.

XQ. While the flood tide has any effect inside of the buoys in the Schuylkill River, the effect is to cut vessels to the eastward?

A. There is no cut to the flood tide after you get inside the buoys.

XQ. After you get fully inside the buoys?

A. Yes, sir.

XQ. But until that time the flood tide coming up the Schuylkill has a decided effect on any vessel entering the Schuylkill?

A. No, sir; not a decided effect.

ADJOURNED.

Mr. Brown: On behalf of the libellant I ask that this Chart U. S. C. and G. S. No. 381, be offered in evidence as Libellant's Exhibit No. 1, October 12, 1926.

Deposition taken, pursuant to agreement, on behalf of the Gulf Refining Company, at the office of Messrs Burlingham, Veeder, Masten & Fearey, No. 27 William Street, New York City, December 12, 1924.

APPEARANCES:

MESSRS. BIDDLE, PAUL, DAWSON & YOCUM, MESSRS. BURLINGHAM, VEEDER, MASTEN & FEAREY (MR. EGGLESTON) for the Gulf Refining Company.

MESSRS. CONLEN, ACKER, MANNING & BROWN (MR. BROWN) for the libellant.

HOWARD M. LONG, ESQ., for Independent Pier Company and ALFRED C. CHURCHMAN and the tugs "Triton" and "F. A. Churchman."

It is stipulated that the testimony may be taken by a stenographer, signing, filing and certification being waived, stenographer's fees to be taxable.

WILLIAM A. PARTA, being duly sworn and examined as a witness for the Gulf Refining Company, testified as follows:

By Mr. Eggleston:

Q. Captain, what license do you hold?
A. Hold master's license.
Q. For what waters and what tonnage?
A. All oceans and all tonnage, and pilot license for New York harbor.
Q. How long have you held that license?
A. Since 1921.
Q. How long have you been going to sea as master of vessels?
A. Been going to sea as master of vessels for the past year.
Q. When did you take out your first license?
A. Took out my first license in May, 1919.
Q. How long have you been going to sea?
A. About fifteen years.
Q. How much of that time did you spend on oil tankers?
A. About four years.
Q. Are you master of the "S. S. Trinidadian" at the present time?
A. Yes.
Q. On October 1, 1923, were you an officer on the "S. S. Gulftrade?"
A. Yes.
Q. What was your rank?
A. I was chief officer.
Q. How long had you been on the "Gulftrade" prior to that date?
A. Since March the 17th, 1923.

Q. Is the "Trinidadian" about to go to sea at any day now?

A. Expect the "Trinidadian" to sail about the middle of the following week.

Q. For what port?

A. Port Arthur, Texas.

Q. Do you recall a collision between the "Gulftrade" and the tow of the steam tug "Taurus" on October 1, 1923?

A. Yes.

Q. At the time of the collision was the "Gulftrade" being assisted by tugs?

A. Yes, she was assisted by two tugs.

Q. Do you recall the names of the tugs?

A. "Churchman" and "Taurus."

Q. Are you sure it was the "Taurus" or was it the "Triton?"

A. "Triton," "Triton," yes, "Triton," that's right.

Q. Where was the "Gulftrade" when the "Triton" and the "Churchman" first made fast?

A. We were about half a mile below the Schuylkill River entrance.

Q. In the Delaware River?

A. Delaware River.

Q. How did these tugs make fast to the "Gulftrade?"

A. Well, one of them made lines fast port side forward and one on the port side aft.

Q. Did anybody board the "Gulftrade" from these tugs?

A. The masters of both towboats came aboard.

Q. And on to what part of the "Gulftrade" did they go?

A. Came on the bridge.

Q. At the time that the masters of these two tugs

came aboard the "Gulftrade," on what part of the "Gulftrade" were you?

A. I was on the forecastle head.

Q. Did you remain on the forecastle head from that time until the collision between the "Gulftrade" and the tow of the "Taurus?"

A. Yes.

Q. Where was the Taurus and her tow when the masters of the "Triton" and "Churchman" first came on to the bridge of the "Gulftrade?

A. The tow was approaching the Schuylkill River on the port bow of the "Gulftrade."

Q. In what part of the Delaware River was she with respect to the channel?

A. Well, she was on the left-hand side of the channel ——

Mr. Long: How about the bow?

The Witness: 'Bow end up the river.

Q. In what part of the channel was the "Gulftrade" at that time?

A. The "Gulftrade" was about mid-channel at the time.

Q. After the tugs had made fast and the masters had come aboard the "Gulftrade," did the "Gulftrade" blow any signal to the "Taurus?"

A. The "Gulftrade," observing the tow ahead, blew one whistle which was answered by the tow.

Q. With what signal?

A. With one whistle.

Q. Who was on the bridge of the "Gulftrade" at that time—on the navigating bridge?

A. Well, the masters of both towboats and the ship's third officer, Mr. Hassell.

Q. Where was the master of the "Gulftrade" at that time, if you know?

A. Why, I didn't notice him, to tell you the truth.

Q. Do you know where the master of the "Gulftrade" was at the time the "Gulftrade" was in collision?

A. Why, he was on the pilot house bridge, the deck below the navigating bridge.

Q. Was there anybody else on the navigating bridge other than the masters of the "Churchman" and "Triton" and Mr. Hassell from the time the tugmasters first came aboard until after the collision?

A. There was a quartermaster at the wheel.

Q. Was there anybody else on the navigating bridge?

A. No.

Q. Who was conducting the navigation of the "Gulftrade" from the time the masters of the tugs first came on to her bridge until after the collision?

A. Well, I understand that the tug boat masters were in full charge as they generally handle the ship in all ways and communicate with the towboats in which manner to assist the vessel in making the turns and entering the Schuylkill River and docking and so on.

Mr. Long: I move that the answer of the witness be stricken from the record; the question calls for specification—not responsive to the question.

Q. Had you been on oil tankers that had gone up the Delaware River and into the Schuylkill River before this date?

A. Yes, quite a number of times.

Q. How many times would you say that you had been up there on tankers?

A. Oh, I should say eight—nine times.
Q. On what vessels?
A. On the "Gulfqueen," "Gulftrade."
Q. On those occasions was the "Gulftrade' and "Gulfqueen" assisted by tugs?
A. Always.

Mr. Brown: I object to that, I don't see what it has to do with this case.

Mr. Long: I join in the objection on the ground that it's incompetent, irrelevant and immaterial.

Q. On those occasions did the masters of the tugboats come aboard the "Gulfqueen" and the "Gulftrade?"

Mr. Brown: I object to that as incompetent, irrelevant and immaterial.

Mr. Long: I join in the objection.

A. Yes.
Q. On any of those occasions were you on the bridge of the tanker?

Mr. Brown: I make the same objection.

A. No, I was chief officer on each one of these vessels and I always was stationed on the forecastle head.
Q. On these occasions do you know who conducted the tanker's navigation after the tugmasters came aboard?

Mr. Brown: Same objection.

Mr. Long: Same here.

A. Usually the tugboat masters took charge of the vessel.

Q. Did they on these other occasions that you have referred to?

Mr. Brown: Same objection.

Mr. Long: Same objection.

A. Yes.

Q. On October 1, 1923, did you observe anybody on the bridge of the "Gulftrade" giving orders as to the vessel's navigation after the tug masters came aboard?

Mr. Long: Objected to.

Mr. Brown: I object to it.

A. I do not know what orders were given but what orders were given were given by the tugboat masters as the captain of the "Gulftrade" was not on the navigating bridge.

Mr. Brown: I move that the answer be stricken out.

Q. Did you see the tugboat masters giving orders on that date?

Mr. Long: I object to it as it has been previously testified he didn't know what orders were previously given.

Mr. Brown: I join in the objection.

A. Well, I—of course, where I was I could not hear what was said or—but I know that what orders were given they were given by the masters of the tugboats.

Mr. Brown: I move that the answer be stricken out.

Q. Did you see one or both of these masters make any signal to the tugs on that date?

A. Well, whoever—I couldn't say who blew the whistle because I am not in a position to see from the forecastle head who blew the whistle forward but whichever one of the tugboat masters was in charge, either one or both, gave the signal for the whistles which were blown on the vessel.

Mr. Brown: I also ask that that answer be stricken out, the witness first says he doesn't know and then he testifies as to what was done.

A. Of course, I couldn't see, you know, what was done, but ——

Q. Did you see either of the tug masters motion to the tugs or blow any whistle to the tugs?

A. Well, the only motions or signals that I seen the tugboat masters make was when they was signalling to their tugboats that is forward like to go ahead or full back, or something like that, which they do in swinging the ship.

Q. What kind of signals were they; were they with a mouth whistle or with their hands?

A. Usually the vessels just sing out and make a motion with their hand.

Q. Did you hear the tug masters sing out on October 1, 1923?

A. Well, I don't recollect just how those maneuvers were made because I wasn't taking any special notice of it at that time and it being so long ago that I don't remember just when signals were made to go ahead and go astern and so on.

Q. How did the "Gulftrade" proceed after she blew the signal of one blast and the "Taurus" answered with one blast?

A. She proceeded slowly ahead.

Q. How did she proceed with reference to the tow ahead and how did the tow proceed, just what took place?

A. Well, the tow was approaching the Schuylkill River on the left-hand side and the "Gulftrade" sheering to the starboard to go around the tow.

Q. To pass the tow on the starboard side—on the tow's starboard side?

A. To pass the tow on the tow's starboard side.

Q. I take it this was in the Delaware River?

A. This was in the Delaware River.

Q. Now tell us how the tow proceeded and how the "Gulftrade" proceeded from then on.

A. Well, the tow was proceeding on the left-hand side of the channel approaching the Schuylkill River; the collision took place just about at the entrance—at the mouth of the river; when almost up to the channel buoys it seemed like the tugboat "Tartarus" or "Taurus" sheered a little to the starboard closer into the "Gulftrade"; and the rear lighter in the tow on the starboard side came close on to the "Gulftrade" and collided with the—broadside to with the "Gulftrade" just abaft the forecastle head, and the towboat—and the barge ahead of that one broke adrift from the towboat and the other lighters and swung across the stem of the "Gulftrade."

Q. How was the weather and the tide that day?

A. Well, it was nice, clear weather.

Q. How was the tide or current of the Delaware River?

A. Well, I don't remember just how the current and tide was at that time, I would have to look it up in the tide tables for that date and time; I don't remember just whether it was flooding or ebbing or what it was doing.

Q. How many boats did the "Taurus" have in tow and how was the tow made up?

A. Four lighters loaded with gravel and sand, two abreast.

Q. The "Taurus" was towing on a hawser?

A. On a hawser.

Q. Was she towing on a single or double hawser, if you know?

A. I think it was a bridle, I am not sure of that.

Q. You testified that shortly after the tug masters came aboard the "Gulftrade" blew one blast and the "Taurus" answered with one blast?

A. Yes.

Q. What other signals, if any, were blown after those?

A. I believe the signal was repeated again shortly afterwards.

Q. You mean the "Gulftrade" again blew a signal of one blast?

A. Blew one whistle.

Q. Was that answered by the "Taurus?"

A. It was answered the same way.

Q. With one blast?

A. One blast.

Q. How did the "Gulftrade" make the turn from the Delaware River into the Schuylkill River?

A. Well, she was making the turn pretty close to the red channel buoy at the entrance of Schuylkill River, that's on the upper side of the Schuylkill River in the approach.

Q. Did the tugs assist the "Gulftrade" in making the turn?

A. I don't think at that time the tugs worked their engines.

Q. As the "Gulftrade" made the turn and swung around to go into the Schuylkill River, did the tugs assist her in making the turn from one river into the other?

Mr. Long: That's objected to as the witness testified that he did not think the tugs' engines were in motion at that time.

A. I don't remember whether the engines were used on the towboats or not at that time.

Q. When the "Gulftrade" was straightened out to proceed between the red and black buoys at the entrance to the Schuylkill River, how was the "Taurus" heading and how was her tow tailing?

Mr. Brown: I object to that question as the witness hasn't testified that the "Gulftrade' did straighten out at any time.

Q. Did the "Gulftrade" swing round and straighten up to proceed into the Schuylkill River?

A. She was ——

Mr. Brown: I object to that question; let the witness testify, Mr. Eggleston.

Mr. Eggleston: Oh, I think that is perfectly proper; make your objection if you want to.

A. The vessel had swung—had swung some towards the entrance of Schuylkill River but I didn't

observe just how she was heading because I was in no position to see the compass or anything.

Q. How far in the Schuylkill River was the "Gulftrade" when the tow of the "Taurus" was first in collision with the "Gulftrade, how much of the "Gulftrade," or was all of her in the Schuylkill River at that time?

A. Well, she was almost abreast of the channel buoys—just about in the approach of the river.

Q. When the tow first came in contact with the "Gulftrade?"

A. Yes.

Q. How was the "Gulftrade" heading at that time with respect to the direction of the Schuylkill channel?

A. She was heading about on the old burnt ranges, there is a couple of ranges there and they burned down—these here. (Indicating on chart.)

Q. I show you chart No. 295 and ask if this chart shows the ranges that you have referred to?

A. Well, this chart shows the ranges all right.

Q. Does this chart show the ranges?

A. It shows the two ranges.

Q. Mark one range with an A and the other range with a B, if you will, please.

(Witness does as requested.)

Q. At the time the "Gulftrade" was on the range that you have testified to, how close was she to the red buoy at the entrance to the Schuylkill River?

A. Well, the red buoy was on the starboard bow—I couldn't just say how far it was—I judge a couple of hundred yards, something like that.

Q. The red buoy at that time was ahead of you?

A. Yes.

Mr. Long: At the time of the collision.

Mr. Eggleston: This is the time entering the river.

Q. How close to the red buoy was the "Gulftrade" at the time of the collision?

A. I can see it all, but I can't say the buoy—just exactly how the whole thing happened there.

Q. Was the buoy ahead of the "Gulftrade" at that time or abreast of the "Gulftrade?"

A. It was— it was a little ahead, it was a little ahead of the "Gulftrade" on the starboard hand; we were pretty close to it.

Q. At the time that you first got on the range, how was the "Taurus" heading and how was her tow tailing?

A. She was parallel with the "Gulftrade."

Q. How was the tow tailing with respect to the tug?

A. The tow was astern of the tugboat.

Q. Was the tow tailing straight behind the tow of the tug—or was it towing off to port—or off to starboard?

A. It was just about straight behind the tugboat.

Q. At the time the tow and the "Gulftrade" were first in collision how was the "Taurus" heading and how was her tow tailing?

A. Well, when the collision took place, the "Taurus" took a sheer across the "Gulftrade's" bow—well, just a minute, now; this collision happened just about in the same place, and you know in the course of a little while it was in the particular turn where this collision took place, as the ship was approaching the entrance of the Schuylkill River on this range with these buoys and the ranges and so on, and the

tugboat with the barge in tow was making the turn about the same time.

Q. At the time of the collision was the tow of the "Taurus" all the way in the Schuylkill River or was part of the tow out in the Delaware?

A. Well, it's hard for me to determine.

Q. If you are not sure, say so.

A. I am not sure.

Q. At the time of the first contact how was the "Taurus" heading and how was her tow tailing?

A. The tow was parallel with the "Gulftrade," the last barge or the scow on the starboard side of the tow came in contact with the "Gulftrade's" side.

Q. What part of the "Gulftrade?"

A. Right abaft the forecastle, right at the break of the forecastle, you might say.

Q. On the port side?

A. On the port side.

Q. How was the "Taurus" heading at that time?

A. The "Taurus" was heading—well, she was —

Q. With respect to the heading of the "Gulftrade?"

A. The "Taurus" was not parallel with the ship's heading—with the "Gulftrade" at that time, she was heading a little across her bow.

Q. At that time was the "Gulftrade" on the ranges that you have marked?

A. I believe she was.

Q. After the starboard boat in the second tier of the tow rubbed against your port bow, what took place?

A. Well, the barge in front of that one broke adrift from the tugboat and the other barges and swung across the stem of the "Gulftrade" and I was looking down at it and saw the stem of the

"Gulftrade" penetrating the lighter about four or five feet.

Q. When the stem of the "Gulftrade" was against the lighter how was the tug heading and how did she bear from the "Gulftrade?"

A. The tug was aheading of the "Gulftrade" and she broke loose— I don't know whether she cast her lines off or whether the lines carried away, at that time I didn't notice—I was watching the lighter, and I don't know just how the tugboat was at the time, but—the next time I looked around, why the tugboat was on our starboard bow.

Q. After the "Gulftrade's" stem was in collision with the barge in the head tier, what was done, what did the "Gulftrade" do?

A. Well, they must have reversed her engines or something because she—they stopped her headway.

Q. What was done with reference to assisting the barge men on the barge that was dumped over?

A. Well, as the barge swung down the starboard side of the "Gulftrade," heeling over, two of the men from the forecastle head ran amidships there to throw life rings to them; the lighter was capsizing very quickly and I hollered to the man on the lighter who was an old man—I said, "Dad, you better jump because that lighter is going to capsize" —and I was motioning to the tugboat up ahead—whether they heard me or not—to head down towards—to pick up that man after the boat capsized and the man was in the water.

Q. When the "Gulftrade" made the turn into the Schuylkill River, what speed was she making through the water?

A. I should say about three miles, something like that, three or four miles an hour going slow.

Q. At the time the tow of the "Taurus was first

in contact with the "Gulftrade," were the tugs "Triton" and "Churchman" alongside the "Gulftrade?"

A. The tugboats were alongside but the tugboat up forward let go and ropped astern to avoid colliding with the barge.

Q. Was the tugboat on your port quarter still made fast to the "Gulftrade?"

A. Yes.

Mr. Eggleston: I offer this chart for identification.

(It is marked Gulf Refining Exhibit 1 for Identification.)

Cross-examination.

By Mr. Long:

Q. You of course have in your mind a picture of this collision, have you not?

A. Yes, sir, I have the picture in mind.

Q. You are now on the "Trinidadian," you say?

A. Yes.

Q. Who is the owner of the "Trinidadian?"

A. Gulf Refining Oil Company.

Q. They own the "Gulftrade" too?

A. Yes, sir.

Q. On October 1, 1923, you were the chief officer of the "Gulftrade?"

A. Yes, sir.

Q. On what voyage was the "Gulftrade" proceeding at this time?

A. What voyage?

Q. Yes, where had she come from?

A. She came from Port Arthur, Texas, bound for Philadelphia.

Q. For the Atlantic Refining Company plant—on the Schuylkill River?

A. No, Girard Point.

Q. When these tugs came out to assist your steamer into the Schuylkill, she was lying about opposite Hog Island in Philadelphia, wasn't she?

A. She was just below that naval wharf there ——

Q. Fort Mifflin?

A. Fort Mifflin wharf.

Q. Do you know where Hog Island is?

A. Yes.

Q. She was above Hog Island, was she?

A. Yes, the tow boats never come out that far after the ships.

Q. Well, not as they usually do, what they did in this case.

A. Well, they didn't; they came alongside off Mifflin bar wharf.

Q. How long were your steamers anchored there before the tugs came?

A. We weren't at anchor.

Q. You were lying there drifting?

A. We were coming up the river.

Q. Slow speed?

A. Slow speed.

Q. The tide was flood, was it not?

A. I don't remember just how the tide was.

Q. When these tugs came alongside you have said that the "Triton" was made fast on the port quarter and the "Churchman" on the port bow?

A. I don't remember just which tug was up ahead and which was astern, I don't recollect the names of them—which was forward and which was aft.

Q. But these two tugs—one of them was made fast on the port quarter and the other on the port bow?

A. Yes.

Q. Now, as you proceeded after the tugs came alongside—the steamship was proceeding under her own power, was she not?

A. Yes, sir.

Q. And the engines of the tugs were not in motion, were they—or don't you know?

A. Well, I don't know.

Q. When did you go up on the forecastle head, after the tugs had been made fast?

A. No, before the tugs were made fast.

Q. And you stayed on the forecastle until after the collision, did you not?

A. Yes.

Q. What were you doing up there?

A. I was standing by the anchor and that is my station while approaching a wharf or docks to make a ship fast.

Q. Who was aft in your steamer—what officer?

A. Mr. Boldt.

Q. I mean what officer was he?

A. Second officer.

Q. That was his station there?

A. Yes.

Q. Your third officer you say was on the bridge?

A. Yes.

Q. Your quartermaster was on the bridge at the wheel?

A. Yes, sir.

Q. The captain of the two tugs were on the bridge?

A. Yes, sir.

Q. One captain was standing up near the helmsman; the other was standing over near the port side of the bridge, was that it?

A. Well, I don't recall just how they were, they moved about, you know.

Q. When you started to proceed, do you know under what bell you were proceeding—under what speed?

A. I believe the vessel was going under a slow bell.

Q. And did she increase her speed at any time after that until the collision?

A. I don't think so.

Q. Now, you saw the red and black buoys which marked the entrance to the Schuylkill River from the Delaware?

A. Yes, sir.

Q. You have been up, you say—up and down the Schuylkill eight or nine times?

A. Yes.

Q. And you know those buoys?

A. Yes, sir.

Q. What was the draft of your steamer?

A. About 26.6.

Q. Are you sure of that or is that just a recollection?

A. Well, we have the logbook here, we can get the exact draft.

Q. But you are not sure?

A. I am not sure that's the draft of the loaded vessel.

Q. Do you know anything about the width of the channel or the Schuylkill or the vessel—the draft of your steamer, assuming she was drawing as much as 26 feet 6?

A. I do not know the width of the channel in the Schuylkill River.

Q. Prior to getting up to the buoys that marked the entrance to the Schuylkill River did you notice the tug "Taurus" and her tow?

A. Yes.

Q. They were some distance ahead of you, were they not?

A. They were a little ahead of us.

Q. I think you said they were on your port bow?

A. Yes.

Q. Was any signal blown by your steamer ——

A. Yes, sir.

Q. (Continuing)—about that time?

A. About that time we blew one whistle.

Q. Was that signal answered by the "Taurus?"

A. Yes, sir.

Q. You heard it yourself?

A. Yes, sir.

Q. Did you see the "Taurus" and her tow turn into the Schuylkill River?

A. She was almost at the turn—well, she was very near the turn when we observed her ahead.

Q. That's when you first blew your first whistle and it was answered?

A. Yes.

Q. Then you saw her go into the Schuylkill River, did you not?

A. Well, she didn't go in the Schuylkill River, the collision took place right there at the mouth of the river.

Q. Your steamer was overtaking the "Taurus," was it not?

A. Yes.

Q. Did you hear another signal blown of one whistle from your steamer to the "Taurus?"

A. Yes, sir.

Q. Was that answered by the "Taurus?"

A. Yes, sir.

Q. Just before the collision did you hear another signal blown by your steamer to the "Taurus?"

A. I don't recall any more signals—whistle signals.

Q. You don't recollect, then, hearing any further whistle signals from either the tug or the steamer?

A. No.

Q. You, of course, being up on the bridge there, couldn't hear what orders were being given or who were giving orders as to the navigation of the steamer, could you?

A. No, sir.

Q. Sir?

A. No, sir, I could not—that is on the forecastle instead of on the bridge.

Q. I meant on the forecastle head, I should have said the forecastle head.

A. Yes, forecastle head.

Q. Do you know of your own knowledge whether or not your master was on the bridge—the navigating bridge?

A. He was not on the navigating bridge, I did not see him up there.

Q. You wouldn't want to testify, however, that he was not there, would you?

A. No—of course—well, he was——

Q. I mean of your own knowledge?

A. No, I did—at that time I didn't see him.

Q. Well, you said the speed of the "Gulftrade" was about three miles an hour through the water?

A. Yes, about that.

Q. How long had you been on the "Gulftrade," Mr. Parta?

A. I was on the "Gulftrade" from March 7, 1922 —no, 1923.

Q. Until——

A. Until October the 1st.

Q. Until October 1st?

A. Yes.

Q. What was the lowest speed the "Gulftrade" could proceed at and maintain steerage way?

A. Well, she could maintain steerage way at the speed she was going.

Q. Could she maintain it at any lower speed than that, do you think?

A. Well, it all depends on circumstances, sometime a vessel can and sometime she can't, all depends on how the currents are going on the vessel.

Q. Well, I will ask you this—in your opinion would it have been safe for the "Gulftrade" to have proceeded at a slower speed in going up this river?

A. No.

Q. You have said that you noticed this red and black buoy marking the entrance to the channel—did you notice the ranges?

A. The ranges were ahead——

Q. Like two lighthouses on the eastern shore of the river, aren't they, on the starboard hand going up?

A. Yes.

Q. And as you came in the river were you navigating right on those ranges?

A. I couldn't say we were navigating right on the ranges, but we were heading on the ranges as near as I could judge, I——

Q. Yes—now you testified that before the collision the "Taurus" took a sheer—prior to taking that sheer you said that the "Taurus" and her tow were parallel to the "Gulftrade"—you mean their course was parallel to the "Gulftrade," do you not?

A. Yes.

Q. They were still ahead of you, weren't they?

A. Well, the rear lighter was abreast of the ship, of course, the tow was ahead, I would say that's the only thing—the tow——

Q. The tug was ahead?

A. The tug was ahead with the tide.

Q. And she had these four lighters, didn't she?

A. Yes.

Q. They were two abreast, weren't they?

A. Yes, sir.

Q. Where were the rear lighters in reference to the ship?

A. They were——

Mr. Brown: When?

Q. (Continuing.)—at the time you say this tug took the sheer—I mean just before she took the sheer.

A. The "Gulftrade" was just passing the rear lighters.

Q. Do you mean that her bow had come up on an even turn with the rear lighters?

A. Yes, with the rear lighters.

Q. And about how far were those lighters off to the port of your ship?

A. Well, they were very close, I should judge about twenty feet or twenty-five feet, something like that.

Q. Had the tug obeyed either the first or second one-whistle signal which you said she gave them?

Mr. Brown: I object as to the course taken by the tug, Mr. Long.

Mr. Long: Well, take that out.

Q. After your steamer, the "Gulftrade," blew the first one-whistle signal to the "Taurus" and after the "Taurus' had answered that signal, did you notice any change in the course of the tug?

A. The tug—no, sir; I didn't.

Q. You didn't notice any?

A. No, sir.

Q. You were looking at it, of course?

A. Yes, I was watching.

Q. So that the best of your knowledge then is that she made no change of course?

A. No, the "Gulftrade" was sufficiently far enough over to pass the tow and there wasn't—well, of course I don't know just how the helm was put on the ship or anything.

Q. No, no, I am just asking what you saw the tug do?

A. The tug at the time did not change out of its course.

Q. When the second one-whistle signal was blown by the "Gulftrade" and after it had been answered by the tug, did you notice that after the exchange of those signals the tug made any change of course—I don't ask you if you noticed; but did she so far as you could see?

A. Not at that time, the tug did not change his course.

Q. You say not at that time; did the tug afterwards change her course?

A. Well, it was shortly afterwards and just about the time of the collision that she took the sheer across the "Gulftrade's" bow.

Q. That would be a sheer then to the tug's starboard?

A. Yes, sir.

Q. And that sheer you say was made about the time of the "Gulftrade's" bow had come up on even turns with the starboard——

A. The rear lighter.

Q. The rear lighter, that is, the starboard lighter of the rear two?

A. Yes, sir.

Mr. Brown: He said that was the time of collision, Mr. Long.

Q. Did she take the sheer before the collision or after?

A. It was before the collision, it was before the collision, but all that took place you know in the course of such a short period of time that——

Q. What caused this collision, you were standing there and saw it—you had these boats on a course to pass safely, then you have a collision; now what caused the collision, you stood there and saw it——

A. All right—the towboat making the sheer across there, whether her lighters was—got in contact with the west bank of the Schuylkill River and pushed them over or the suction of the ship's headway turned them over or not, I don't know which, but something pushed them lighters over towards the ship and the rear of the lighter collided with the ship's side and of course the towboat that we had on our port bow let go to get clear of that lighter, so she wouldn't run into the lighter.

Q. And she came up around her stern and tried to save the man from the lighter, didn't she?

A. Yes, and of course when this rear lighter collided with the ship's side it broke up the man's tow——

Q. Had that tug——

Mr. Brown: Let him finish, Mr. Long; you asked him what caused the collision.

A. (Continuing)—and of course I don't know whether the towboat—they let go the tow-line or whether the tow-line parted, but the lighters that—

the two lighters in fact started to fall across the "Gulftrade's" stem.

Q. Yes.

A. Falling over.

Q. Now at that time you say the tug was also heading across the course of the "Gulftrade?"

A. Yes, and I believe that this man on the lighter let go the forward lines and that allowed the other lighter to swing back again on our port side and I—there was another person on this lighter that had jumped on to the other one and that let this lighter swing across on our starboard side alone.

Q. If the tug had not taken this sheer, would this collision have occurred, in your opinion?

Mr. Brown: I object to that question because he has testified he doesn't know what caused the vessels to come together.

Q. Go ahead and answer it.

A. The cause of the collision was this barge coming in contact with the ship's side.

Q. Well, yes, of course——

A. (Continuing.)—and what made it come alongside I don't know, but the lighters came alongside of the ship instead of the ship going alongside of the lighters.

Q. You mean to tell me that with your experience as a seafaring man and as an officer of the ship standing up on the forecastle head of this steamer and seeing these boats on a course in which they would pass safely and seeing these tugs sheer across to the starboard and across the steamer's bow, that the tug's sheer did not cause this collision, would you say that?

A. It had a tendency, yes.

Q. Wasn't that the cause of it?

Mr. Brown: I object to that question, Mr. Long; the witness hasn't testified; he doesn't know.

A. I wouldn't say that was the cause of it.

Q. What did the steamer do that caused it then?

A. Well, it was really the breaking of the formation of the tow—those lines parting; if the towboat that had their barge in tow would have been able to keep this tow-line on the barges and had a strain on them, why I believe that everything would have went clear.

Q. So in your opinion, from what you saw there, it was the breaking of the tow-line between the tug and the lighters that caused the collision?

A. Yes, sir.

Q. You, of course, don't know what broke the tow-line, do you?

A. No, I don't.

Q. You wouldn't ascribe this collision to the fact that the tug had not kept over to the port further, of the "Gulftrade," in obedience to the one-whistle signal?

Mr. Brown: I object to that question.

A. I never did know why the tugboat didn't stay over there; she made a little sheer across the course of the "Gulftrade."

Q. So as I understand your testimony, instead of the tugboat obeying the one-whistle signal and keeping over further to the port of the "Gulftrade," she sheered over to the starboard and across the course of the "Gulftrade."

A. Yes.

Q. Is that right?

A. Yes, she sheered across—of course, she didn't get on the starboard side of the "Gulftrade," but

she sheered her course towards the "Gulftrade" closer in and I don't know what made her do that sheer.

Q. And by taking that sheer, she brought herself nearer to the "Gulftrade" or nearer to the course of the "Gulftrade?"

A. Yes.

Q. And it was almost immediately after that sheer that the collision occurred?

A. The collision occurred just about very shortly after that.

Q. You, of course, Mr. Parta, don't feel that you have enough familiarity with that entrance to the Schuylkill River to testify as to the exact point where this collision occurred, do you?

A. No, sir; I—it was while making the turn in there and—it was—it happened right at the mouth of the river in the vicinity of those buoys, right——

Q. Your steamer had gotten above the buoys, hadn't it, inside the buoy?

A. No, they was right there almost abreast of the buoys, the collision took place just as—just after the ship had turned into the Schuylkill River from the Delaware and was heading approximately on these—I suppose they call it—well, it's the Schuylkill River range—I think is the name of that range.

Q. Did you hear any orders given to the engine room on your steamer immediately after this tug took this sheer?

A. No, sir.

By Mr. Brown:

Q. Captain, as you entered the Schuylkill River and about the time that the second whistle signals were exhanged between your vessel and the tug "Taurus," where were you?

A. I was on the forecastle head.

Q. And how far from the stem was that?

A. Well, I should judge about that time I was standing forward of the windlass five or ten feet from the stem.

Q. And what is the breadth of your steamer at that point?

A. About ten feet.

Q. Were you standing amidships or alongside of either rail?

A. Well, I couldn't say just what side I was on, I was running from one side to the other, usually when I am up there I just go from one side to the other a good bit, looking here and there.

Q. Were you actually doing anything there or were you just looking?

A. I wasn't doing anything at the time, I was just standing by on the forecastle head having my carpenter stand by the anchors waiting for any orders for me which I would issue in regards to letting the anchor go, and so on.

Q. The carpenter was there, too, was he?

A. Yes.

Q. Was he doing any work himself or was he just standing there?

A. He was standing by there.

Q. Were the two of you standing there together?

A. No, I was forward of the windlass and he was abaft of the windlass at the controllers.

Q. Had you been there all the time that the vessel was coming up the river?

A. Yes, sir.

Q. About how high out of the water do you think the stem of the "Gulftrade" was?

A. About eighteen feet.

Q. Could you from where you were see over the stem and see the tug?

A. Oh, yes.

Q. Up until the very moment of collision?

A. Yes, sir.

Q. Now, with reference to the ranges—when was it that you noticed the position of your vessel as far as the ranges were concerned?

A. When she turned in towards the Schuylkill River.

Q. Would you say that was before the whistle signals were exchanged or afterwards?

A. Oh, no; it was after the whistle signals.

Q. How much time elapsed between the exchange of the second whistle signal and the collision, approximately——

A. Oh, I should judge say about three or four minutes, something like that.

Q. And it was after the second whistle was exchanged that you noticed your position on the ranges?

A. Yes, sir.

Q. Would you say that you were a little to the eastward of the ranges or westward of the ranges?

A. I——

Mr. Eggleston: Do you know the directions there?

The Witness: Oh, yes, yes.

A. (Continuing.)—I think if we were anything we were to the eastward of the range.

Q. How did the range line up from where you were?

A. Well, lined up ahead.

Q. Did you see the two ranges?

A. Oh, yes, the buildings you know are burnt down and you can't get any kind of a range on

them, but you know when you are heading for them —one of the buildings is burnt down and——

Q. Were they open at all?

A. I couldn't say whether the ranges were open or not; I didn't take bearing on them well enough for that.

Q. You couldn't say whether the ranges were open at all?

A. No.

Q. So that you don't know, as a matter of fact, where your vessel was with reference to the ranges, do you?

A. Yes.

Q. Accurately?

A. Accurately, I couldn't say that we were on the ranges, but it appeared to me that we were.

Q. But anyhow, as far as your position when you entered the river was concerned, you were a couple of hundred yards to the port of the red buoy, weren't you?

A. Yes, we were—the red buoy was on—a little on our starboard hand.

Q. How far away from the tow were you at the time of the exchange of the second whistle signal—when I say the tow I mean the last barge in tow.

A. Yes, the last barge—well, I should say a couple of hundred yards, it's—of course, it's a matter of estimation.

Q. Where on your vessel did the last barge come into collision with you?

A. The last barge?

Q. Yes, about what part of your vessel?

A. Well, at the break of the forecastle, that is about, I should say about thirty or forty feet abaft the stem—the length of the barge when she came—she came alongside just like this (indicating) and the front end of that barge was just about abreast

of our stem, so when the tow—you know it kind of jack-knifed across our stem, and the ship had a little headway on, it just pushed its stem right on to that lighter when she jack-knifed in front of it.

Q. And she jack-knifed in front of you after you hit the first barge?

A. Yes, after the first barge came alongside and collided.

Q. And that's the time the lines were parted, of course, after the collision with the first barge?

A. Yes.

Q. And as you came up with that barge were you watching that barge?

A. I was watching because we were quite close to him, I should say twenty-five or thirty feet, something like that.

Q. You said about twenty feet——

A. Yes.

Q. That is, as you came up the rear of your vessel was about twenty feet off the last barge?

A. As we came up——?

Q. As you came up with the tow, the stem of your vessel was about twenty feet from the rear of the stern barge?

A. Yes, we were—that is, that far away from him.

Q. That far off to the starboard?

A. Yes, yes.

Mr. Long: To the port you mean, don't you?

Mr. Brown: No, they were to the starboard.

A. (Continuing.)—we were to starboard—well, of course, when she was—I don't mean that we were twenty feet away from the lighter when we were astern of them.

Q. I know, I understand——

A. We were about twenty feet away from them when the lighters were alongside—that's when she pulled in alongside the ship.

Q. And that's when you were watching the lighter?

A. Yes.

Q. And it was at that time that you say you noticed this slight sheer of the tug?

A. Yes—yes, just shortly before the collision.

Q. Just about as you came into collision, wasn't it?

A. Yes.

Q. As a matter of fact, you noticed the sheer just at the time you came into collision with that stern barge, didn't you?

A. Yes, shortly before, I couldn't just say right now how long it was before or—but I was looking up there and I was wondering why the towboat was making that sheer.

Q. And that was just about the time you came into collision with the stern barge?

A. That was very shortly before the collision.

Q. At that time the stern barge was about twenty feet off to your port hand?

A. Yes, the stern barge was about twenty feet on our port hand.

Q. Did you at that time notice the course of your own vessel?

A. No, sir; I didn't.

Q. And you were just about entering the mouth of the Schuylkill River, weren't you?

A. Yes.

Q. Did you notice any change in speed in your vessel until after the collision?

A. Well, I didn't take no notice of the speed until just about when they had the collision and I knew

that the headway was taken off the vessel, so they must have been working their engines astern.

Q. Did you notice any change of speed from the time the tugs came alongside until you got really up to the point of collision as you were coming up the river?

A. As we were coming up the river, coming ahead slow, and I should judge we were making about between three and four miles an hour.

Q. Yes, but you didn't notice any change in that speed?

A. No.

Q. Could you tell from where you were about how far off the western shore the tow and this tug were?

A. No, I couldn't say, they were pretty well over on that side.

Q. The two sets of one blast each were the only whistle signals you heard?

A. That's the only whistle signals that I heard.

By Mr. Long:

Q. Your ship wasn't damaged as a result of this collision, was it?

A. No.

Re-direct examination.

By Mr. Eggleston:

Q. Captain, after you got on the range and were overhauling the tow, how far off did it look to you that the "Gulftrade" would pass the tow?

A. Well——

Q. You can do it in ship length or any part of the ship or in feet.

A. Well, if everything would have been all right

and passed, she would have passed close by, I should say about fifty or sixty feet, something like that, away from us.

Q. You have testified that at one time the tow was twenty feet off the stem of the "Gulftrade."

A. Yes—well, off the "Gulftrade's" side, yes.

Q. Was that after the tow had drawn over closer to you?

A. Well, that's about the time the towboat made that sheer.

Q. Captain, at any time after the tug masters came aboard and on to the bridge of the "Gulftrade" and before the collision, did you see the master of the "Gulftrade" on the navigating bridge?

A. Captain Karlson?

Q. Yes.

A. No.

Q. On the navigating bridge?

A. No.

Q. You kept a smooth and rough deck log on the "Gulftrade?"

A. Yes, I kept a smooth log.

Q. Who wrote up the rough log on that voyage?

A. Each officer writes up his own watch.

Q. Do you know where the rough log is?

A. No, I have no idea.

Q. I show you this log and ask if that's the smooth log of the "Gulftrade" for October 1, 1923?

A. Yes.

Q. Are the entries in your handwriting?

A. Yes.

Q. Did you correctly transcribe from the rough log into the smooth log?

A. Word for word.

Q. Was this report to the Local Steamboat Inspectors in the log when you last saw it?

A. No.

Q. Before today?
A. No.

Mr. Eggleston: I ask to have it marked for identification.

(The log is marked Gulf Refining Exhibit 2 for identification.)

Further depositions taken on behalf of the Gulf Refining Company on board the SS. "Gulftrade" at Bayonne, New Jersey, January 22, 1925.

Present as before.

Same stipulation as heretofore noted.

CHARLES G. CARLSEN, being duly sworn and examined as a witness for the Gulf Refining Company, testified as follows:

By Mr. Eggleston:

Q. Captain, what license do you hold?
A. Unlimited master's license.
Q. How long have you held that license?
A. Since 1916, I think.
Q. When did you take out your first license?
A. As a mate or master?
Q. Yur first license of any kind?
A. 1914.
Q. How long have you been going to sea?
A. About 29 years.
Q. How long have you been going to sea as master?

A. Since 1917, in April.

Q. At the present time you are master of the steamship "Gulftrade?"

A. Yes, sir.

Q. Were you master of the steamship "Gulftrade" on October 1st, 1923?

A. Yes, sir.

Q. Do you recall a collision on October 1st, 1923, between the "Gulftrade" and the tow of the tug "Taurus" in the Schuylkill River?

A. Yes, sir.

Q. Where was the "Gulftrade" bound on that voyage, where had she come from?

A. From Port Arthur, Texas, bound for Girard Point, Philadelphia.

Q. Was the "Gulftrade" loaded at the time of collision?

A. Loaded with oil in bulk, yes.

Q. What was her draft—you may refer to the log?

A. 25 something (referring to "Gulftrade" Exhibit 2 for identification) 25.10 forward, aft 26.5.

Q. At the time of collision was the "Gulftrade" being assisted by tugs?

A. Yes, two tugs.

Q. Do you recall the names of those tugs?

A. The "Triton" and "Churchman."

Q. Where was the "Gulftrade" when the "Churchman" and "Triton" first came alongside and made fast?

A. About half a mile—about a mile below the mouth of the Schuylkill River.

Q. In the Delaware River?

A. In the Delaware River.

Q. How was the tide?

A. The tide, running in.

Q. At the time the tugs made fast to the "Gulf-

trade," did anybody come aboard the "Gulftrade" from the tugs?

A. Yes, the captain of one of the tugs came aboard, up on the navigation bridge.

Q. Where were you at the time the tug captain came up on the navigation bridge?

A. Up on the bridge myself.

Q. Who else was there, if anybody?

A. The third officer, Mr. Hassell, and one quartermaster, I don't recall his name.

Q. Was the "Gulftrade's" engine in motion at that time?

A. No, she was stopped.

Q. What did you do after the tug captain came aboard and onto the bridge?

A. Well, after the tug captain came aboard I told him I wanted to go down to the toilet because I had been on the bridge 15 hours, about, he said he would take charge and everything was all right, I went down.

Q. You then went below?

A. I went below, yes.

Q. Did the second tug captain come aboard the "Gulftrade?"

A. He came on board when I came back from my room and came up on the bridge deck, there was two of them up there.

Q. After you went below did you hear any signals from the "Gulftrade?"

A. I heard a whistle—blowing one whistle.

Q. Did you hear any answer to that one whistle?

A. Yes, one whistle, but she blowed one whistle again and then I run up on the bridge.

Q. I understood you to say the "Gulftrade" blew one whistle and it was answered?

A. Yes.

Q. What was it answered with?

A. With one whistle.

Q. What was the next whistle from the "Gulftrade?"

A. One whistle again, answered by one whistle.

Q. When did you come out on deck?

A. When did I come out on deck?

Q. After you came up on the bridge?

A. After I went below—after I heard the two whistles answered, I ran up on the deck.

Q. Do I understand you to mean that after you heard a one-blast whistle twice and answered you came up on the bridge?

A. Yes, I came up on the bridge.

Q. What bridge did you come up on?

A. On the pilot house bridge.

Q. Where was the "Gulftrade" when you came up on the pilot house bridge?

A. She was heading in—just made a turn heading into the Schuylkill River.

Q. How was the "Gulftrade" heading with reference to the channel of the Schuylkill River?

A. Well, she was heading parallel with the shore line.

Q. In what part of the channel was she?

A. To the eastward in the channel.

Q. How long before the collision occurred was it that you came up onto the pilot house bridge?

A. Well, a minute or so, it wasn't long, about a minute.

Q. About a minute?

A. About a minute.

Q. When you first came out on the pilot house bridge, where was the tug "Taurus" and her tow?

A. She was ahead a little on the port bow of us.

Q. How far ahead would you say the hind tier of the tow was from the "Gulftrade" when you first

came out onto the pilot house bridge—you can give it in feet or ship's lengths or tug lengths?

A. I cannot just recall that, she wasn't very far ahead, but I just cannot think of how much it was —say, probably, 200 feet.

Q. How far off the east bank of the Schuylkill River was the "Gulftrade" at that time?

A. She should have been 75 feet anyway.

Q. You say she should have been—was she?

A. About 75 feet.

Q. How was the "Taurus" and her tow proceeding with respect to the course of the "Gulftrade?"

A. She was parallel with the "Gulftrade," going the same way.

Q. Did the "Taurus" alter her course in any way?

Mr. Brown: I object to that kind of a question; why don't you ask the captain to tell you what happened?

Mr. Eggleston: I think it is perfectly proper.

Mr. Brown: I think it is a leading question?

Mr. Eggleston: Make your objection.

Mr. Brown: Objected to as leading.

Q. Did the "Taurus" make any change in course after you came up onto the pilot house bridge, before the collision?

A. She took a sheer.

Q. Which way did she sheer?

A. Took a sheer across our bow.

Q. At the time the "Taurus" took the sheer, what speed was the "Gulftrade" making?

A. About three miles—between two and three miles.

Q. What is the lowest speed the "Gulftrade" can make loaded and maintain proper steerage way?

A. About three miles.

Q. After the "Taurus" took the sheer which you have spoken of, tell us just what happened.

A. Well, she took ——

Q. How the vessels came into collision, etc.

A. She took a sheer and got in the path of us—got in front of us or ahead of us and the last barges they got on our bow.

Q. What boat in the tow came into contact first with the "Gulftrade" and what part of the "Gulftrade" did she come in contact with?

A. The last barge—the second barge, we struck her on the port bow.

Q. What part of your bow?

A. Just forward of the break of the forecastle head.

Q. How was the tow of the "Taurus" made up?

A. She had them in tiers.

Q. How many boats?

A. Must have been four.

Q. How many tiers?

A. Two, as near as I can recollect.

Q. After the starboard boat in the hind tier came in contact with the "Gulftrade's" port bow, what happened?

A. She swung right across our bow and over toward on the starboard side.

Q. What swung across your bow?

A. The barge where we struck.

Q. At the time of the first contact, how was the tug "Taurus" heading with respect to the "Gulftrade's" heading?

A. Heading the same way as the "Gulftrade," but she had sheered over.

Q. Sheered over which way?

A. Toward port.

Q. When the "Taurus' took the sheer that you speak of, which way did she sheer?

A. She sheered over to port.

Q. Captain, I notice that you indicate that she sheered to the right and you have testified that the tug sheered to the port ——

Mr. Brown: I object, the captain did not indicate, he indicated with his left hand as I understood it.

A. Toward the right.

Q. Did the "Taurus" sheer the way that you indicated with your hand, toward the right?

A. Toward the right.

Q. Or did she sheer to port as you have testified?

Mr. Brown: Objected to as the captain has already testified twice distinctly that the vessel sheered to port.

A. She sheered to the right, that is what we call port.

Q. At the time of the first contact, how was the "Gulftrade" heading with respect to the main ship channel?

A. She was parallel in the channel.

Q. In what part of the channel?

A. In the Schuylkill River.

Q. In what part of the channel, west side, east side or middle of the channel?

A. To the eastward of the channel, parallel with the channel.

Q. How was the "Taurus" heading with respect to the "Gulftrade?"

A. Heading in the same direction as the "Gulftrade."

Q. Would you say that the steamship and the tug were on the same compass heading?

A. Well, I couldn't say just on the same compass heading, but they was heading the same way —about the same line, yes.

Q. What was done on the "Gulftrade" after the collision?

A. Well, the towboat let go, he went over to give what assistance he could and threw some life lines over and one man from the ship he tried to swim over with a life-line to help the man in the water, but he sunk before he ever got there.

Q. From the time that the tug captain came onto the bridge of the "Gulftrade" and you went below, until after the collision did you issue any orders with respect to the navigation of the "Gulftrade?"

A. No, sir.

Q. Did any of your officers, to your knowledge?

A. No, sir, not that I know.

Cross-examination.

By Mr. Long:

Q. You, of course, don't know what your third officer did standing up on the bridge?

A. No, not that I know.

Q. Captain, have you any familiarity with the channel of the Schuylkill River?

A. Yes, sir.

Q. How many times have you been running up there with your ship?

A. I don't know, I have been running off and on for ten years—not always as master, but officer—chief officer.

Q. You know there are ranges, as you come in the Schuylkill River there are two buoys coming in from the Delaware, you remember those?

A. Yes, I know those.

Q. You run up on ranges?

A. Yes, two ranges up above.

Q. You went below and while you were down here you have testified you heard one whistle signal blown by the "Gulftrade."

A. Yes.

Q. You heard that answered by some other vessel?

A. Yes.

Q. What vessel it was that was answering, you didn't know at the time?

A. No, I didn't know at the time.

Q. Then you heard the "Gulftrade" blow another whistle?

A. Yes, and that was answered.

Q. Then you ran up?

A. Then I ran up.

Q. Did you see the other vessel that answered these signals?

A. Yes.

Q. What was that?

A. A tug with barges.

Q. The tug "Taurus" with these barges or sand lighters?

A. Yes.

Q. You say she had four in tow in two tiers?

A. Yes, so far as I can recollect.

Q. Now the "Gulftrade," when you got on the bridge deck, was running up the channel of the Schuylkill River, you say?

A. Yes.

Q. Running up on these ranges, was she not?

Mr. Brown: I object to that insofar as the witness testified to the relation between the "Gulftrade" and the tugs he is of course a hostile witness insofar as you are concerned.

Mr. Long: This is cross-examination.

Mr. Brown: Insofar as the witness testifies generally in exoneration of the actions of the "Gulftrade" and the tugs he is not a hostile witness as far as you are concerned; I want to object very strongly to leading questions of this witness on your part.

Q. Please state whether or not this steamer was running between the ranges coming up the river when you came up on the bridge deck?

A. Yes.

Q. Any question in your mind about that?

A. No.

Q. Did you see the ranges?

A. I saw the ranges.

Q. Do you have enough familiarity with that channel, do you know how wide a channel you had for a vessel with the draft of your boat on this occasion —in other words, did you know what width of channel you had in which to navigate a steamer drawing 26.5 inches?

A. I expect ——

Q. Do you know?

A. 450 feet.

Q. Is that a guess or have you made a meausrement?

A. I have not made a measurement, that is what I figure.

Q. You would be surprised to learn it was only 250 feet, would you, the width of the channel?

Mr. Brown: I object to that statement.

A. I really don't know about it.

Q. When you came on the bridge deck you saw the "Taurus" and her tow and you say they were a little on the port bow?

A. On the port bow, yes.

Q. And your best estimate of the distance is 200 feet ahead?

A. About that, yes.

Q. Now, Captain, you stood on that bridge deck until after the collision, didn't you?

A. Yes.

Q. I want you to tell us if after you came on the bridge deck the "Gulftrade" had held her course and the tug with her barges or scows had held her course, would the vessels have passed safely in your opinion?

A. Yes.

Q. Within what distance would they have passed each other?

A. Say 100 feet.

Q. In other words, the "Gulftrade" would have passed 100 feet to the starboard of the tug?

A. Of the tug, yes, sir.

Q. And the scows?

A. And the scows.

Q. Is there any question about that in your mind?

A. No.

Q. Now, as a matter of fact you stood there and saw that there was a collision, didn't you?

A. Yes.

Q. Just tell us from what you saw what was done by either the "Gulftrade" or the tug and scows which brought about this collision, bearing in mind that you said if after you came on the bridge deck the "Gulftrade" had held her course and the tug with her scows had held her course the vessels would have passed at a distance of 100 feet?

A. This is the tow. (Indicating.)

Q. Draw me a diagram.

A. This tug, he took a sheer to the right—port we call it—if that tug had not taken a sheer to the right we would have passed within 100 feet of each other.

Q. When he took a sheer to the right or port, do I understand you to call port right or do you call it starboard?

A. We call it port.

Q. You mean you port your helm?

A. Port our helm.

Q. But you sheer to the right?

A. Sheer to the right.

Q. Your right is starboard, isn't it—if sheering?

A. The ship goes really to starboard.

Q. You mean the cause of the sheer is the port helm, is that it?

Mr. Brown: I object to what he means, let him state it?

A. He sheered to the right, if that is more clear.

Q. When you say to the right, was that away from the "Gulftrade's" course or toward her course?

A. Across her bow.

Q. How far across the "Gulftrade's bow did the tug get, Captain?

A. The tug got not very far across on the other side; I couldn't judge exactly.

Q. Clear across, I mean her full length across or how?

A. No, he got about ahead, but the barges—the tide in the meantime was fair and shoved the barges on the bow.

Q. Of what?

A. Of the "Gulftrade," account of the tug boat taking that sheer to the right.

Q. I understand that from the time you came on that bridge deck and noticed that the courses of the steamer and the "Taurus" with her tow were such that if they held they would have passed safely at 100 feet—from that time until the tug took a sheer, were the vessels proceeding in that same direction?

A. Well, till she took the sheer—she just about took the sheer when I came up.

Q. So that after the "Taurus" took the sheer I understand you to say she herself had gotten over ahead of the "Gulftrade?"

A. Yes, almost ahead—more or less.

Q. And the tide you say ——

A. was running in, fair and shoved the tug toward the "Gulftrade."

Q. Did the "Gulftrade" hit the forward scow—on the forward tier or the rear tier, did you say?

A. The rear first.

Q. Now what happened after she hit the scow on the rear tier, did she hit any other scow?

A. Well, I am not sure if she hit the first tier or the first scow or the second scow because it was too much excitement, but I know she pushed one scow across our bow.

Q. I understood you to say in your direct examination that the the "Gulftrade" was coming in there she was 75 feet from the east bank; you don't mean from the bank of the river, do you, or did you mean the channel?

Mr. Brown: Don't lead him.

A. Yes, about 75 feet, I guess, from the east bank.

Q. And the east bank going up there was the left-hand bank or the right-hand bank?

A. The right-hand bank.

Q. So then as I understand, the "Gulftrade" coming in was navigating on the right-hand side of the channel?

A. Yes, on the east side of the channel coming in.

Q. Captain, could you make us a little sketch showing the "Gulftrade" coming in this channel, the "Taurus" with her scows on the course 100 feet from her as you have told us and then show us the boats in collision—show us their relative position after the "Taurus" sheered?

A. I don't know that I can.

Q. Can't you draw a rough sketch of it?

(Witness does as requested.)

A. That is the "Gulftrade" ——

Q. Which is the "Gulftrade?"

A. This was the "Gulftrade" in the first position.

Q. Now will you put the "Taurus?"

(Witness does as requested.)

Q. Captain, put your name on it, in ink.

(Witness does as requested.)

A. That is the way I can recollect it.

Q. That is how it happened as you remember it?

A. That is the position the way I remember it.

Mr. Long: I ask it be marked for identification.

(It is marked "Triton-Churchman" Exhibit A for identification.)

Q. I understood you to say that one of these is the first position, the other the second position?

A. Yes.

Q. Will you mark under "Gulftrade" the first position?

(Witness does as requested.)

Q. As I understand it, the second position which you indicate there was just before the collision?

A. Just before she hit—just when she hit—they might be a little too far below but that was when she hit.

Q. Captain, when you came on the bridge deck did you see the first officer on the forecastle head?

A. Yes, and the carpenter.

Q. Now the "Gulftrade" was proceeding under the force of her engines, was she not?

A. She had steam, yes, she was navigated by steam.

Q. Steering by steam?

A. Steering by steam, yes, we used our engines, also the tugboats' assistance.

Q. Do you know whether or not the tugboats' engines were in motion?

A. I couldn't tell you that, no, the only way I noticed the tugboat as soon as they struck, one of the tugs run right over to try to help.

Mr. Brown: May I see the log?

(The log is tendered.)

Mr. Eggleston: It is marked for identification.

Mr. Brown: It will be offered in evidence and then it will be too late to cross-examine this witness.

Mr. Long: I object to the log being offered in evidence and to the witness being cross-examined on it.

Mr. Brown: You do object?

Mr. Long: Are you asking the basis of it?

Mr. Brown: Yes.

Mr. Long: Objected to as immaterial and incompetent evidence. I make my objection at this time as I assume that as soon as Mr. Eggleston has tendered the log and Mr. Brown has examined it, Mr. Eggleston will attempt to offer it in evidence.

Mr. Eggleston: I will.

Q. Captain, where were you when you came below after the tug captains came on?
A. In the toilet.
Q. When you went above where did you go up?
A. When I went back up?
Q. Yes, how did you go up?
A. The same as we went up now.
Q. Up into the chartroom and out onto the bridge?
A. Yes.
Q. I understand you to say that that was about a minute before the collision?
A. A minute or so, yes.
Q. Captain, what did you do immediately when you came up?
A. Well, I didn't do—I didn't do anything. I just watched for what was going to happen.
Q. What was the first thing that was called to your attention as you came up?

A. The scow, when we got over on that side that took my attention the first thing.

Q. Was that the first thing you saw?

A. Yes, the first that I can recollect, I saw things all right but what I recollect is I noticed that barge coming over there and got some life rings.

Q. I just want to get the first thing you saw as you came on deck?

A. Just before she hit the first I remember was when the barge struck the bow and she swung over.

Q. Could you see from your position on the bridge the bow strike the barge?

A. Yes.

Q. You could?

A. Yes.

Q. How high out of water was this barge or scow?

A. She wasn't very high, I couldn't tell that, but she was very low, deep loaded with sand.

Q. So that she was very low in the water?

A. Yes.

Q. When you first saw her was she in collision with your stem or was she on the port side or starboard side?

A. The port side of the ship.

Q. Was she in collision with your boat then?

A. She shoved off—the boat shoved her off across the bow.

Q. What shoved across the bow?

A. The bow of the ship shoved the barge across the bow.

Q. That was the first thing you remember seeing, is that correct?

A. I saw them first ahead before she struck, but I saw that right on the bow when I came up on deck, she was about abeam, then she took a sheer.

Q. What was abeam?

A. The barge, well not abeam, but just about four points of the ship I might say—where is that sketch—that is what I saw first when I came up on deck. (Indicating the first position.)

Q. That sketch indicates, Captain—of course, I know it isn't drawn to scale—that the tier of barges was very slightly forward of amidships on the port side of the "Gulftrade," is that her position?

A. She was about at the forecastle head when I first saw it, she probably was a little further back—the ship—than the sketch. (Indicating the "Gulftrade.")

Q. The "Gulftrade" was a little further back of the barges than you had indicated in the sketch, is that right?

A. Yes, then I saw them here (indicating first position), about here.

Q. Would you say that this tier of barges was alongside the "Gulftrade," to the port side and about halfway between amidships and her bow?

A. About that, yes, about halfway.

Q. And how long a line would you say there was between the tug and the leading barges?

A. Well, I canont recollect—40 or 50 fathoms or feet.

Q. Do you mean fathoms or feet?

A. That—I am not positive of that how far they could be, I am not positive how long this line was between the barges and the tug because I really didn't notice that much.

Q. I understand, Captain—when you first came out did you see the bow of your boat in collision with the barge?

A. No, she was about halfway between the stem and amidships.

Q. That is there was a barge halfway between your

stem and amidships and off to the port side, is that correct?

A. Yes, sir, and then she took a sheer.

Q. We will come to that sheer—Captain, did you notice the "Taurus" and four barges before you went below?

A. I noticed them but I didn't take—the ship was stopped, I saw them ahead but I didn't take any particular notice about that because they were well off, I didn't take any particular notice.

Q. Do you know about how far ahead they were at the time?

A. No, I couldn't judge how far they were because I really didn't notice much, I saw the ship was in a safe place, I don't really know, but I remember I noticed them ahead.

Q. When you were still in the Delaware River?

A. Yes.

Q. Before you came below?

A. Before I came below, about a mile or so before.

Q. Captain, how long is your ship by the way?

A. 448 feet.

Q. So then it is about 220 some feet from amidships to the stem, would you say that?

A. I don't think there is 200 feet, it is longer aft.

Mr. Eggleston: He says from amidships to the stem.

A. (Continued.) Yes, she is 448 feet long.

Q. Now, as you came up with this tow were you going faster or slower than the tow?

A. Coming up the river?

Q. Yes.

A. We were going faster than the tug, we would have passed the tug, but we was stopped and wait-

ing for tugboats—I stopped about a mile or so below the Schuylkill.

Q. But I mean when proceeding up the Schuylkill River, were you going faster than the tug and this tow?

A. We must have been because we was up on them, I don't know because we was almost abreast when I came up, they was ahead—away ahead when I went below.

Q. Did you see your vessel come in contact with any of these barges?

A. Yes, I saw when she hit on the second position here.

Q. What did you see?

A. Saw the barges drifting on the port bow on the "Gulftrade" and then one of the barges or—this one—coming right across the bow so she got around on the starboard bow.

Q. You got one on the starboard bow and one on the port bow?

A. Yes, the one on the starboard bow is the one that capsized.

Q. And, Captain, when you came up the river there as you came out on deck did you keep watching the barges and the tug from the time you came out until the collision occurred?

A. Well, I wasn't up much—probably a minute and a half or so.

Mr. Long: While you were up.

A. (Continued.) Yes, I looked at them.

Q. As a matter of fact, when you came up you were about in collision with the barges?

A. Yes, about a minute or a minute and a half.

Q. You got up just about the time the collision took place?

A. Yes, sir.

Q. The first thing as a matter of fact that you saw was the barge on the starboard bow, wasn't it?

A. On the port bow, that is the first position I saw.

Q. Then didn't you immediately see the barge on your starboard bow?

A. It was a minute after, something like that.

Q. Did you hear the crash of collision?

A. Yes.

Q. Where were you then?

A. Up on the bridge.

Q. Whereabouts on the bridge?

A. Over there on the port side.

Q. Did you call out to any of the people on the upper bridge?

A. No.

Q. You did not?

A. No.

Q. But you kept watching the tug and its tow from the time you got up there until after the collision, didn't you?

A. Yes.

Q. When was it that you saw the ranges?

A. After the collision.

Q. After the collision?

A. Yes, or at the same time you might as well say.

Q. What do those ranges look like?

A. They look black to me—black poles or something like that.

Q. And to which side of the ranges were you when you looked at them after the collision?

A. A little to the eastward.

Q. Of the ranges?

A. Of the channel.

Q. On the right-hand side of the channel?

A. Yes.

Q. Going up river?

A. Yes.

Q. About 75 feet from the bank?

A. Yes, after the collision we were closer to the bank, I don't think we was more than 40 feet the way it looked to me because we stopped, you know.

Q. Captain, before the collision—you noticed the ranges after the collision, didn't you?

A. About the same time I looked.

Q. While the collision was occurring you looked around and looked at the ranges?

A. I looked where we was and saw the ranges ahead.

Q. What speed was your boat making then?

A. At the collision she was almost stopped.

Q. She wasn't run up to full speed, was she?

A. No—at the collision she was going full speed astern, I think.

Q. Do you know?

A. I am not sure.

Q. Did you hear any signals given?

A. No—I heard signals, I heard the engines, but I never looked at the indicator.

Q. You don't know what signals were given?

A. No, I presume astern, but I am not sure, but she had no headway on her, I know that, she didn't have any headway.

Q. Captain, I hand you a chart C. and G. S. No. 381—you are familiar with this chart, I suppose?

A. Oh, yes.

Q. Will you indicate on that chart where the "Gulftrade" was when you came up from below?

A. I reckon about here.

Q. Take a pencil.

A. I saw them ranges there, she was a little to the eastward of that, most likely about here.

Q. Make a round circle, Captain.

(Witness does as requested.)

Q. That is the position of the "Gulftrade" when you came on deck?

A. When I came on deck.

Q. When you came on deck do you know whether you were inside or outside of those buoys at the entrance to the river?

A. I don't recollect that, I didn't look for the buoys.

Q. How did you place the position of the "Gulftrade" where you have indicated on the chart?

A. Because after the collision she was right up toward the bank here or about 40 or 50 feet, see there is the land—the edge of the land so I should say about—must have been almost right up to the bank after the collision.

Q. After the collision?

A. Yes.

Q. So, Captain, you are judging your position, when you first came on deck, in the river by the position you were in after the collision, is that correct?

A. No, she was further ahead after the collision than when I came on deck.

Q. But you said when you came on deck you didn't notice the buoys?

A. I didn't notice the buoys.

Q. You said also that after the collision you were in a certain position which you have indicated, will you indicate it there?

A. Somewhere up around here, I think.

Q. Mark the first position with a 1 and the second position with a 2.

(Witness does as requested.)

Q. I will ask you again, Captain, is it not true that

you judge the position you were in when you first came on deck by the position the vessel was in after the collision?

A. I judge the position—the first position, this was the position after she was in collision I think between those—about the middle between those two positions.

Q. Now, Captain, I repeat the question I asked you before, you judge your position which you have indicated by No. 1 here because you were where you have indicated No. 2 after the collision, is that right?

A. We struck here, about here the scow turned over (indicating between the positions marked 1 and 2) the scow came out here, I judge the position on account of the scow turned over, he was out in the river, see.

Q. That is all right, Mr. Eggleston can ask you those questions after a while. You didn't see these buoys when you first came on deck, did you?

A. No, I didn't at all.

Q. As a matter of fact you don't know where you were when you first came on deck, do you?

A. Heading up the canal.

Q. Up the canal?

A. Up the Schuylkill River, I saw the ranges, I know we was out of the Delaware River.

Q. Do you know how far below these buoys you were?

A. No, I don't.

Q. Did you see the buoys at any time?

A. I don't recollect that, I did look for them.

Q. So, I ask you again, the position which you have indicated and marked 1 on the chart, you have not indicated by any observation of your own, it is merely a guess, is that correct?

Mr. Eggleston: I object to the question, the wit-

ness has testified that he saw the ranges when he first came up.

A. That is why I put this position, because I saw the ranges, she was a little to the eastward.

Q. Did you see the buoys?

A. No.

Q. How do you know you were outside of the buoys?

A. On account of after the collision we was still on the ranges.

Q. I am not asking you about the ranges.

A. We was here, somewhere between them places (indicating between positions 1 and 2) because we were on the ranges or to the eastward, if we had not been we would have been further up here or out here, some place. (Indicating.)

Q. So that when you first came on deck you were somewhere between positions 1 and 2, is that correct?

A. Yes.

Q. But you don't know exactly where, do you?

A. No, I judge about here.

Q. You judge about there?

A. Yes.

Q. Captain, how was the tide?

A. Running in.

Q. Was it strong?

A. Strong flood tide.

Q. What kind of a shore is this along here, do you know?

A. Soft mud.

Q. Do you know if there is a jetty out there or not?

A. No, not that I know of.

Q. None that you know of?

A. None that I know of, there might be, I don't know it.

Q. Captain, where was the tug—how far ahead of your bow when you first saw it—about?

A. On the first position she must have been 100 feet anyway.

Q. That is the tug I am talking about?

A. Oh, well, at the first position I think she must have been about——

Mr. Eggleston: Is this the tug or the tow?

Q. The tug.

A. I cannot recollect how far she was ahead, I noticed her ahead but I can't judge how far it was.

Q. How far off your port bow was she would you say?

A. I should judge about 100 feet when I first saw her.

Q. Could you tell whether she was far ahead of your bow or not very far ahead?

A. No, she was not so very far ahead, no—she took a sheer——

Q. We will come to that. This is when you first saw her?

A. When I first saw her she must have been 200 feet ahead of us anyway.

Q. 200 feet ahead of your bow?

A. Yes, when I first saw her.

Q. And 100 feet off to the port?

A. About that.

Q. That is about right, isn't it?

A. Yes.

Q. Did you at any time until after the collision see the tug on your starboard bow?

A. No, sir.

Q. Were there any marks on the shore on the port side that you observed prior to the collision with re-

ference to the course of the tug and the "Gulftrade" or the tug and its tow and the "Gulftrade?"

A. No, I didn't notice any marks until after the collision, then I saw—I judged we were about 40 or 50 feet from the east bank.

Q. No, this is before the collision?

A. Before the collision, no, I looked at the barges more than anything else then.

Q. Did you turn around and look aft at all prior to the collision?

A. Did I what?

Q. Look out over your stern at all prior to the collision?

A. Before the collision?

Q. Yes.

A. No, I don't recollect I did look over the stern.

Q. Captain, when you estimated the speed of the "Gulftrade," did you mean over the ground or through the water?

A. Through the water.

Re-direct examination.

By Mr. Eggleston:

Mr. Eggleston: I will offer in evidence the chart marked by the witness.

(It is marked Gulf Refining Exhibit 3.)

Q. Captain, you have referred to the east bank in your testimony, will you just mark with an E what you have referred to as the east bank.

(Witness does as requested.)

Q. Before the collision took place could you see

the east bank or didn't you take notice of the east bank until after the collision?

A. I didn't notice the east bank until after the collision but I could see the ranges ahead, that is I am positive we were to the eastward in the river—of the channel.

Q. Where is the pilothouse bridge on which you went with reference to the navigating bridge, where is it located?

A. The second bridge from the navigating bridge.

Q. Is it the bridge under the navigating bridge?

A. Yes, sir.

Q. You have testified, Captain, that when you first came up onto the pilothouse bridge the tow was about 200 feet ahead and about 100 feet off the port bow?

A. Yes.

Q. Could you see open water between the "Gulftrade" and the tow?

A. Yes, sir.

Q. Did you file a report of the collision with the United States local steamboat inspectors?

A. Yes, sir.

Q. I show you Gulf Refining Exhibit 2 and ask you if that is a copy of the report that you filed with the United States local steamboat inspectors?

A. Yes, sir, it must be. (Reading it.)

Q. Is that a copy of your report?

A. Yes, sir.

Q. Did you put that copy in the log?

A. Yes.

Q. What was the name of the carpenter who was standing forward with the chief officer?

A. I don't remember.

Q. Is he aboard the "Gulftrade" now?

A. No.

Q. Do you know where he is?

A. No.

Re-cross examination.

By Mr. Long:

Q. Captain, you have testified that you went below and while below you heard the "Gulftrade" blow one whistle which you heard answered with one whistle by some other vessel?

A. Yes.

Q. Afterwards you heard the "Gulftrade" blow another one-whistle signal which you heard answered by some other vessel?

A. Yes, sir.

Q. Then you came up on the pilothouse bridge?

A. Yes.

Q. Did you come right up after hearing that last whistle?

A. Yes.

Q. What did you do, walk up or run up?

A. Ran up.

Q. When you came up on the bridge did you come up on the port side of the bridge or starboard side?

A. Port side.

Q. And when you got up on the bridge did you look out to see what vessels were in your vicinity?

A. Yes.

Q. You saw what?

A. The tow boat "Taurus" with her scows.

Q. Is that the time when you say the tow was about 200 feet ahead and about 100 feet to your port?

A. Yes, sir.

By Mr. Brown:

Q. You said at that time the tug was about 200 feet ahead?

A. Yes.

Q. And the barges were off to your port side as you have already testified?

A. Yes.

Q. Captain, about how high out of water was your bow at that time, do you know?

A. She was drawing about 26 feet, we can easily see that, from 26 up, I don't know how high that would be but about 26 feet from there on up—must have been seven or eight feet anyway.

Q. Your bow was seven or eight feet out of water?

A. Yes, must be more than that.

Q. More than that?

A. Somewhere around that, I don't know—I am not positive how far the bow was out of water, but it could be measured.

Q. How was the weather?

A. The weather, clear and fine.

Q. It was the middle of the afternoon, wasn't it?

A. Yes.

Q. Captain, could you—I know that you didn't have a watch in your hand—but did this collision occur almost immediately after you got on deck or was there some little length of time between the time you got on deck——

Mr. Eggleston: He has already testified that he was on the bridge a minute or a minute and a half before the collision. I object to the question on that ground.

A. I don't know if it was a minute, you can never tell, it might be a little longer but the way I judge it was about a minute, but it might be a little longer because a minute goes quick when you are kind of excited.

By Mr. Eggleston:

Q. Captain, you said that the barge struck the "Gulftrade" at about the break of the forecastle head, how far forward of the bridge is the break of the forecastle head?

A. I guess about 30 feet from the stem, something like that, 25 or 30—she must have struck about 20 feet from the stem.

Q. Aft of the stem?

A. Abaft the stem.

Q. How far is it from the bridge to the stem?

A. We can get that from the plan of the vessel.

Q. Will you refer to the ship's plan and let us have that distance?

A. Yes, I can look that up.

(It is stipulated that Mr. Eggleston will ascertain and state of record the length of the ship, her beam, the distance from the stem to her bridge and the length of her forecastle head, also the height from the top of the forecastle head to the water when loaded 25 feet 10 inches, and that these measurements be made part of the record. Also the height of the navigating bridge from the main deck, and the height of the pilothouse bridge on which the captain said he was standing, to the main deck.)

By Mr. Brown:

Q. There were two tugs alongside the steamship, weren't there?

A. Yes.

Q. Where were they?

A. One on the bow, one on the quarter.

Q. Which side?

A. On the port side.

Q. Do you know which one was at the bow and which one at the stern or quarter?

A. I don't know, I couldn't tell.

Q. When you came up on the bridge, was there a tug alongside your port bow?

A. Yes.

Q. And did that tug stay there until the collision?

A. No, he let go when the collision—he let go about the same time.

Q. About the time of the collision?

A. A little before.

Q. How far aft of the stem was he?

A. Well, he was made fast abaft the break of the forecastle head.

Q. Do you know whether that tug was using its own power at the time or not?

A. I don't know that because they handle that with whistles, their own signals.

Q. Captain, when you saw the tug take the sheer, was that about the time of the collision—the tug "Taurus" I am talking about?

A. Well, say half a minute before.

Q. Then you would say almost immediately after that the collision occurred?

A. Yes.

Mr. Eggleston: He said half a minute.

Q. You had no watch in your hand?

A. No.

Q. That is a guess on your part?

A. That is all, guess work.

Q. Almost immediately after that the collision occurred?

A. Yes.

Q. When you speak of collision, do you mean the collision with the barge that went around on your

starboard side or the barge that you hit with the bluff of your bow?

A. The first collision.

By Mr. Long:

Q. If the tug had not taken that sheer, would the collision have occurred?

Mr. Brown: I object to that.

A. No, sir.

By Mr. Eggleston:

Q. You have said that it was about half a minute after the tug took the sheer that the first contact occurred—could it have been more than a minute?

A. From the time——

Q. She took the sheer.

A. Until it hit?

Q. Yes.

A. No—about half a minute, I should say.

By Mr. Brown:

Q. If anything it was less than half a minute.

Mr. Long: I object, the witness has already said about half a minute.

A. About half a minute.

W. E. COWART, being duly sworn and examined as a witness for the Gulf Refining Company, testified as follows:

By Mr. Eggleston:

Q. Were you an engineer on the "Gulftrade" on October 1st, 1923, when the "Gulftrade" was in collision with a tow with the tug "Taurus?"

A. Yes.

Q. What rank?

A. First assistant.

Q. Were you in the engine room at the time of the collision?

A. Yes, sir.

Q. What time did you go into the engine room that afternoon?

A. When the tugboats came alongside the ship.

Q. Did you remain in the engine room from that time until after the collision?

A. Yes.

Q. What were you doing in the engine room?

A. Handling the engine.

Q. Do I understand you to mean you were standing at the throttle?

A. Yes.

Q. From your position at the throttle could you read the engine telegraph?

A. Yes, sir.

Q. What did you do as orders came down on the engine telegraph?

A. Had a man at the telegraph to answer the bells, whatever way they wanted the engines, astern, ahead, slow, full ahead, anything they asked for.

Q. Did you read the orders yourself as they came down on the telegraph?

A. Yes, sir; sure.

Q. Did you operate the engines in response to those orders?

A. Yes.

Q. Were those orders properly executed?

A. Yes, sir; they was.

Q. Were they promptly executed?

A. Yes, sir.

Q. Did you have any trouble with the engines on that day?

A. Not a bit.

Cross-examination.

By Mr. Long:

Q. Did you keep a log?

A. No, sometimes—sometimes the engineer is with me.

Q. Was there a log kept on this occasion of the orders that you received after the tugboats came alongside until after the collision?

A. Kept the bells we got down below.

Mr. Eggleston: I tender the rough engine log-book of the Gulf Refining Company.

Q. Was this kept by you?

A. No, this is Mikkelborg's, I had him minding the telegraph while I worked the engine, he was second engineer, he answered the bells and wrote them down, then I look to see what it says on the telegraph, the same as he does.

Q. Do you know his handwriting?

A. Yes.

Q. Is that his handwriting?

A. Yes.

Q. Where is Mikkelborg now?
A. I couldn't tell you, he left there.
Q. So that you operated the engines on this occasion and also called out the orders on the telegraph and Mikkelborg put them down in the rough log?
A. I operate the engine as they give the orders, either half, slow, astern, ahead, whatever order they give, I look back, he looks at it, whatever it says I give, half speed—he answers and marks it down.

By Mr. Eggleston:

Q. He calls out the orders?
A. No, he doesn't call out the order, a bell rings.

By Mr. Long:

Q. You both look at it?
A. Both look at it, I got to look at it, the throttle is here, the telegraph back here. (Indicating.)
Q. He answers back with the same signal that he gets?
A. Yes.
Q. He rings the telegraph that shows on the bridge?
A. Yes.
Q. You had a license as first assistant engineer?
A. Yes.
Q. What did that cover?
A. Unlimited.
Q. Was it first assistant's or chief's?
A. First assistant, still the same license.
Q. How long have you had that?
A. Nearly five years, will be next September.
Q. About time to get a new one, isn't it?
A. Yes, sir.

Q. What do these marks mean on here, for instance you have 12-4?
A. That means his watch.
Q. Now you have X 12:51?
A. Stop.
Q. What is X?
A. Stop, then two marks full speed ahead 12:53, there is stop again.

Mr. Eggleston: I object to counsel questioning this witness from the log-book until after the log has been offered in evidence.

Mr. Long: I thought you had offered your log.

Mr. Eggleston: I offer the engine rough log and the engine smooth log in evidence.

(They are marked Gulf Refining Exhibits 4 and 5.)

Mr. Long: I ask that my questions be put in nunc pro tunc.

Mr. Eggleston: No objection to that.

Q. I notice you have here 1:26 with sort of an L and two cross marks, what does that mean?
A. Full speed.
Q. I notice you have at 3:09 just an L, what is that?
A. Slow ahead.
Q. 3:12 you have an L with one mark?
A. Half speed.
Q. Now I notice at 3:32 you have a plus mark and L, what is that?
A. Half speed astern.
Q. 3:43 and L in front, what is that?

A. Slow ahead.

Q. They are the marks that you use on this ship to indicate——

A. Yes.

Q. In other words S means stop, L with two vertical marks means full ahead?

A. Full ahead.

Q. And plain L means slow ahead?

A. Slow ahead.

Q. L with one vertical mark is what?

A. Half speed ahead.

Q. Now what mark is on here indicating when your engines are reversed—going astern?

A. One right there. (Indicating.)

Q. Two vertical marks with an L going backward?

A. Yes.

Mr. Eggleston: I offer the smooth deck log in evidence.

(Gulf Refining Exhibit 2 for identification is marked in evidence.)

Mr. Brown: Please note my objection to the smooth deck log being marked in evidence.

(Further deposition taken on behalf of the Gulf Refining Company at the office of Messrs. Burlingham, Veeder, Masten & Fearey, 27 William Street, New York City, February 9, 1925.)

(Present as before.)

WILLIAM JAMES HASSELL, being duly sworn and examined as a witness for the Gulf Refining Company, testified as follows:

By Mr. Eggleston:

Q. Mr. Hassell, what license do you hold?
A. Master's license.
Q. How long have you held that license?
A. About a year and a half, last July was a year.
Q. Is that an unlimited master's license?
A. Unlimited master's license.
Q. When did you take out your first license?
A. 1918, I think.
Q. How long have you been going to sea?
A. 20 odd years.
Q. Are you on the "Gulftrade" now?
A. Yes, sir.
Q. What is your position on the "Gulftrade" at the present time?
A. Second mate.
Q. Were you third made on the "Gulftrade" on October 1st, 1923?
A. I was.
Q. Do you recall a collision between the "Gulftrade" and the tow of the tug "Taurus" in the Schuylkill River?
A. Yes, sir.
Q. At the time of collision was the "Gulftrade" being assisted by tugs?
A. By two tugs.
Q. Where was the "Gulftrade" when the two tugs joined her?
A. About half a mile below the Schuylkill River.
Q. In the Delaware River?
A. In the Delaware River.

Q. Do you recall the names of the two tugs?

A. The "Triton" and "F. E. Churchman" I think.

Q. When the "Churchman" and the "Triton" made fast to the "Gulftrade" in the Delaware River, what positions did these tugs take alongside the steamer?

A. One was forward of the bridge.

Q. On which side?

A. Port side, and one on the aft.

Q. On which side?

A. Port side.

Q. At the time these tugs made fast, on what part of the "Gulftrade" were you?

A. On the bridge, top bridge.

Q. Who was on the bridge with you?

A. The quartermaster and captain.

Q. Did anybody come aboard the "Gulftrade" from the tugs "Triton" and "Churchman?"

A. Both captains came on board.

Q. On what part of the "Gulftrade" did they go?

A. Up on the bridge.

Q. Did the two tug captains come aboard together or did one come aboard before the other?

A One came aboard a little ahead of the other.

Q. Do I understand that he came right up on the bridge?

A. Came right up on the bridge, as near as I can tell.

Q. Who was on the bridge when the first tug captain came on the bridge?

A. The captain, myself and quartermaster.

Q. Who remained on the bridge after the first tug captain came aboard?

A. Why, the captain and I and the quartermaster.

Q. The captain of the tug or the captain of the ship?

A. The captain of the ship remained on the bridge for a while.

Q. Did the captain of the ship go off the bridge after the first tug captain came aboard?

A. No, not as I remember.

Q. Who was on the navigating bridge at the time of the collision?

A. The captain of the two tugs, myself and the quartermaster.

Q. Where was the captain of the "Gulftrade" at the time of collision?

A. He had gone down to the toilet, he asked permission if he could go down and both captains of the tug said "Oh, yes, we are all right."

Q. Where was the "Gulftrade" when the captain of the "Gulftrade" said he was going below?

A. She was—I couldn't say the distance, but quite a distance behind—up in the Schuylkill River then.

Q. How long after the two tug captains came aboard the "Gulftrade" and onto her bridge was it that the captain of the "Gulftrade" went below?

A. I couldn't remember how long it was.

Q. At the time the two tug captains came onto the bridge of the "Gulftrade," was the "Gulftrade's" engine in motion?

A. Not when they first came aboard, she had stopped.

Q. Who gave the first order for the movement of the "Gulftrade's" engines after the tug captains came aboard?

A. One of the tug captains.

Q. Was the captain of the "Gulftrade" on the bridge of the "Gulftrade" then?

A. Yes, sir.

Q. Who operated the engine telegraph?

A. I did.

Q. When the tug captains first came aboard, could you see the tug "Taurus" and her tow?

A. I don't remember, they was right ahead of us as far as I remember, at least I didn't notice right away, you know.

Q. Where was the "Gulftrade" when you first paid any attention to the "Taurus" and her tow?

A. I guess we was just about entering the Delaware from the other river.

Q. The Schuylkill River?

A. The Schuylkill River, I cannot think of that name.

Q. Was the captain of the "Gulftrade" on the bridge at that time?

A. Yes.

Q. Were any signals blown by the "Gulftrade?"

A. One long blast.

Q. Who gave the order for that one-blast signal?

A. The captain of one of the tugs.

Q. Do you know which one?

A. If I remember right it was the captain of the "Triton," I think.

Q. Was that one-blast signal answered?

A. Yes, sir.

Q. What was it answered with?

A. One blast.

Q. From the "Taurus?"

A. From the "Taurus."

Q. When the one-blast signal was interchanged, where was the tug "Taurus" and her tow with respect to the "Gulftrade," how did she bear from you?

A. She bore on our port bow.

Q. Where did the tug "Taurus" and her tow go, did she continue up the Delaware River or did she turn up the Schuylkill River?

A. Up the Schuylkill River, she went in.

Q. The collision occurred in the Schuylkill River?

A. In the Schuylkill River.

Q. Did the "Taurus" head up the Schuylkill River ahead of the "Gulftrade?"

A. Yes.

Q. When the "Gulftrade" made the turn from the Delaware River into the Schuylkill River, were the tugs "Triton" and "Churchman" alongside?

A. Yes, sir.

Q. Did these tugs assist the "Gulftrade" in making the turn?

A. They did.

Q. Who gave the orders to the tugs?

A. The captain of the tugs.

Q. You said there was a signal of one blast interchanged?

A. Yes.

Q. Were there any other signals before the collision?

A. Well, they blowed one blast the second time.

Q. The "Gulftrade" did?

A. Yes.

Q. Was that answered?

A. That was answered.

Q. With one blast?

A. With one blast.

Q. Where was the "Gulftrade" and where was the tug "Taurus" and her tow when the second signal of one blast was interchanged?

A. The "Gulftrade" was I should say about 200 feet astern of the tow.

Q. Was the "Gulftrade" in the Schuylkill River then?

A. Yes.

Q. Who was on the bridge of the "Gulftrade" at that time?

A. At the second blast?

Q. Yes.

A. The captain of the two tugs, myself and the quartermaster.

Q. Do you know where the captain of the "Gulftrade" was then?

A. I couldn't say.

Q. Who gave the order for the second one-blast signal?

A. The captain of the tug blowed it himself.

Q. After the "Gulftrade" entered the Schuylkill River, in what part of the channel did she proceed?

A. The right-hand side of the channel.

Q. What part of the channel was the "Taurus" and her tow proceeding in when the "Gulftrade" blew the one-blast signal the second time?

A. She was on the left-hand side.

Q. How was the "Gulftrade" heading at that time with respect to the channel or any land marks?

A. Headed on the ranges, as I remember.

Q. Headed on the ranges?

A. Yes.

Q. How was the "Taurus" heading at that time?

A. She was heading I should say a little on the left-hand of the ranges.

Q. How was she heading with respect to the general direction of the channel?

A. Well, we were on the starboard hand, she was right on our port bow heading up the channel.

Q. Was the "Taurus" heading straight up the channel or headed to the left or to the right?

A. She was headed straight up the channel then.

Q. Was the "Gulftrade" overtaking the tow at that time?

A. A little, yes.

Q. If both vessels had held their courses, would they have passed clear of each other?

Mr. Brown: Objected to, after all, that is a matter for the Court to determine. Ask him what the vessels did.

Q. After the second signal of one blast was interchanged, how did the "Gulftrade" proceed and how did the "Taurus" proceed?

A. The "Gulftrade," she proceeded to starboard to avoid the ship, the tug she slopped over, you know.

Q. Which way?

A. To the starboard side.

Q. What do you mean by slopped over?

A. That is an old saying, she starboarded, you know, sheered over is the proper way.

Q. Did she sheer toward the "Gulftrade's" course or away from it?

A. Toward it.

Q. What speed was the "Gulftrade" proceeding at at that time?

A. I should say the "Gulftrade" was proceeding about three knots an hour.

Q. What is the lowest speed you can have on the "Gulftrade" loaded and maintain proper steerage?

A. Slow speed, that is about as small as we can give, I think around three knots.

Q. After the "Taurus" took this sheer that you speak of, what happened?

A. The "Gulftrade" she struck one of the barges, I couldn't see which it was, on the bluff of the bow.

Q. Struck one of the barges?

A. Struck one of the barges.

Q. One of the barges in the starboard tier?

A. In the starboard tier, yes.

Q. Do you know whether she struck the starboard barge in the head tier or the starboard barge in the hind tier?

A. I couldn't tell.

Q. When the bluff of the "Gulftrade's" port bow fetched up against the barge, where was the tug "Taurus?"

A. Right ahead of us.

Q. From the time the tug captains first came aboard the "Gulftrade" until after the collision, did you give any orders as to the navigation of the "Gulftrade?"

A. No, sir, I did not.

Q. Did you hear any of the "Gulftrade's" officers or crew give any orders as to the navigation of the "Gulftrade" or the tugs?

A. No, sir.

Q. Is this the rough log-book of the "Gulftrade" for October 1st, 1923?

A. October 1st, 1923, yes, sir.

Q. Are the entries in your handwriting?

A. Yes, sir.

Mr. Eggleston: I ask that the log be marked for identification.

(It is marked Gulf Refining Exhibit 5 for identification.)

Q. Did you see the red and black buoys which mark the entrance to the Schuylkill River?

A. I noticed the red one.

Q. How far off the red buoy did the "Gulftrade" pass?

A. I suppose 50 or 75 feet.

Cross-examination.

By Mr. Brown:

Q. When did you join the "Gulftrade?"

A. Joined the "Gulftrade" in 1923.

Q. When in 1923?

A. 13th of August.

Q. Had you been up the Schuylkill River before this collision?

A. Maybe once or twice—a couple of times.

Q. A couple of times before?

A. Yes.

Q. Had you been up there in the daytime or at night?

A. Well, I have been up in the daytime before.

Q. How many times in the daytime?

A. I don't remember if three or four trips we made there since I have been in the ship.

Q. Before the collision?

A. Before the collision—about two or three times I guess, I never keep track—I don't recall the number of times.

Q. As a matter of fact, do you remember whether you had been into the Schuylkill River with the "Gulftrade" before this collision or not?

A. Yes.

Q. You had—once?

A. More than once.

Q. Twice?

A. Twice or three times.

Q. How do you fix the entrance to the Schuylkill River?

A. Coming up the Delaware River, as we call it —you come up this way you know (indicating) and come that way to the Schuylkill River. (Indicating a turn to the left with his hand.)

Q. But when do you know that you are out of the Delaware River and in the Schuylkill?

A. By that turn, I always had a mark, like the Delaware River runs beyond that—I go by Girard

Point, I notice the sign there when we turn there, I know we are bound there.

Q. Do you consider that you are in the Schuylkill River when you starboard your helm to make the turn?

A. Well, entering it.

Q. When do you consider that you are in the Schuylkill River?

A. Well, when the ship is headed up toward that point there—Girard Point I think it is, there is some——

Q. Do you mean when the ship starts to make the turn?

A. No, a little outside of that, in turning around just as we have to start the ship turning to port, a little ahead of it you know so that when we sheer into that bend we can head right up the river.

Q. So that you consider that you are in the Schuylkill River shortly after you begin to starboard your helm to make the entrance, is that correct?

A. Shortly after.

Q. About how long after?

A. I couldn't say, sometimes the vessel is going more speed than others, you know.

Q. Which way do you put your helm to go into the Schuylkill River coming up the Delaware?

A. Starboard—turn the wheel to port.

Q. I say in proceeding up the Delaware River, how do you throw your helm to enter the Schuylkill River?

A. Starboard, sir.

Q. Starboard your helm?

A. Yes.

Q. And then what course do you make, do you know?

A. Well, there is ranges beyond the point there that we steer mostly by.

Q. Where are the ranges?

A. I have not been there since then, you know.

Q. You haven't been there since?

A. No.

Q. Have you ever entered the Schuylkill River in charge of the navigation of a ship?

A. Never, no.

Q. Did you ever pay particular attention to the marks and aids to navigation on entering the Schuylkill River?

A. I know the aids to navigation, the black buoy on the port side and the red buoys on the starboard side, in them cases I mark them, that is good aids whether you know the place or not, you can follow them buoys down.

Q. When you came into the Schuylkill River at this time, what part of the bridge were you standing on?

A. Standing by the telegraph.

Q. You were operating the telegraph?

A. Operating the telegraph.

Q. Where were you—where was the "Gulftrade" rather when the first blast of the whistle signal was blown to the "Taurus?"

A. Just before we entered the Schuylkill River.

Q. Where was the "Taurus" then?

A. She was ahead of us, I don't know how far.

Q. Had she entered the Schuylkill River?

A. I think so, yes.

Q. Had entered?

A. I couldn't say for sure.

Q. Where was she with respect to your vessel?

A. Well, she was ahead of us, just a little on the port bow then.

Q. And at what speed was your vessel proceeding at that time?

A. At slow speed.

Q. And how far astern of the tug "Taurus" and its tow was your vessel at that time?

A. I couldn't say for sure.

Q. Then the two vessels proceeded until another one-whistle signal was exchanged between them?

A. Yes.

Q. How far astern of the "Taurus" were you at the time the second one-blast signal was exchanged?

A. I should say 200 feet or so.

Q. About 200 feet?

A. A little over, I guess.

Q. Did you see the red buoy marking the entrance to the Schuylkill River?

A. I did notice it.

Q. When did you see it?

A. Before the collision, a while before the collision, a little while before the collision.

Q. How long before the collision?

A. Maybe—I don't know, I never noticed the time.

Q. Where was the buoy when you saw it?

A. On our starboard side.

Q. Abeam?

A. Yes, pretty near abeam.

Q. Did you see the black buoy?

A. I didn't notice.

Q. Where was the last barge or the last tier of barges in the tow of the "Taurus" with respect to the bow of the "Gulftrade" at the time that second one-blast whistle signal was exchanged?

A. A little on the port bow.

Q. How far astern of the last tier of barges was the "Gulftrade?"

A. I should say 200 feet.

Q. How far to the port was the last tier of barges —to the port of the "Gulftrade?"

A. I couldn't tell you because I didn't—you see I was standing right by the telegraph and the only

chance I could get was just to look—I couldn't detect the distance away I stood exactly all the time.

Q. Why not?

A. Because when orders was stand by for orders from the captain of the tugboat, what to do with the telegraph.

Q. Where was the telegraph?

A. The telegraph on the port side of the top bridge.

Q. Was it forward on the bridge or aft on the bridge?

A. I don't know how many feet, it is right alongside of the wheel, I guess the wheel was about six or eight feet from the forward part of the bridge.

Q. As a matter of fact, when the last whistle signal was interchanged, could you see the last tier of barges?

A. I could see them by raising this way. (Indicating.)

Q. By raising your head?

A. Yes.

Q. Could you see them as the "Gulftrade" continued to approach the tow—could you see the last tier of barges?

A. I didn't notice all the time, no.

Q. Well, did you keep looking at them?

A. No, sir.

Q. You did not?

A. No.

Q. You don't know how far to the port of the "Gulftrade" the barges in the tow of the "Taurus" were, do you—estimated in feet?

A. What time then?

Q. At the time the second one-blast whistle signal was exchanged?

A. I was noticing a little more that time than

any time and that is I should think 200 feet astern of her.

Q. That isn't what I mean.

A. You mean astern of the barges?

Q. How far off to the port of the "Gulftrade" were those barges?

A. I couldn't estimate that—I couldn't estimate that.

Q. Were they very close to the course of the "Gulftrade?"

A. I should say 50 or 100 feet—between 50 and 75 feet.

Q. Between 50 and 75 feet?

A. Yes.

Q. Did you as a matter of fact after the second one-blast signal was exchanged, give any signals to the engine room?

A. Did I?

Q. Yes.

A. I don't remember what signals were given.

Q. Do you know whether you gave any or not?

A. I don't remember.

Q. You don't remember giving any?

A. I don't remember which it was I gave.

Q. Do you know whether you gave any signals to the engine room between the second-blast signal was interchanged and the collision, or not?

A. I remember when the collision was I was telegraphing full speed astern.

Q. That was at the time of the collision?

A. Just before it, you know just in the instant, I couldn't say how quick it was, but the captain of the tug told me to put full speed astern on.

Q. What was your speed immediately before that?

A. I don't remember.

Q. Who gave you that order, by the way?

A. The captain of the tugboat.

Q. Do you know which tug?

A. Well, I am mixed up with the two captains one from the other, but I think it was the captain of the "Triton," he is the tallest of the two, with a little black moustache.

Q. When you were ordered to give that signal to the engine room, could you see the last barges in the tow of the tug, could you see them?

A. I didn't notice them.

Q. You didn't notice them?

A. No.

Q. Had you noticed them between that time and the time the whistle signal was exchanged?

A. I did notice them sometime.

Q. Between the time of the last whistle signal was exchanged and the time you got an order to reverse the engines, did you notice the barges?

A. No, I did not.

Q. Under what helm, if you know, was your vessel proceeding at the time you were giving the order to reverse the engines?

A. We were proceeding to the right.

Q. Under what helm was your vessel proceeding?

A. We was ported our helm.

Q. Do you remember when the order to port your helm was given?

A. I couldn't remember the time.

Q. Was the order to port the helm given before the order to reverse the engines?

A. I don't remember.

Q. Do you remember any order being given to port the helm?

A. I do remember an order was given.

Q. Who was at the wheel?

A. The quartermaster.

Q. But you don't remember whether the order

was before or after the reverse order for the engines, do you?

A. It was a little before that.

Q. A little before?

A. Yes.

Q. Do you know how far ahead or how long a hawser there was between the tug and the barges?

A. I couldn't say, sir, it wasn't very long anyway, not a very long hawser.

Q. Do you know how the tide was?

A. I don't remember, sir.

Q. As you came into the Schuylkill River, what kind of a helm was the "Gulftrade" under?

Mr. Eggleston: I object to the form of the question—at what time?

Mr. Long: I think I will object to that, the question is indefinite.

Mr. Brown: As he came into the Schuylkill River.

Q. As the "Gulftrade" entered the Schuylkill River, was the helm changed?

Mr. Eggleston: I object to the form of the question.

Mr. Long: That is indefinite.

A. I could not remember.

Q. You don't know?

A. I don't remember.

Q. You don't remember?

A. No, there are so many changes of courses going up a river anywhere, maybe there is 150 one right after the other, that you can't recollect that.

Q. Well, the "Gulftrade" came up the Delaware River, didn't she?

A. Yes.

Q. And at a certain point her helm was changed to enter the Schuylkill River, was it not?

A. Yes.

Q. When that change was made, how was the helm put?

A. Starboard.

Q. Can you tell how long the "Gulftrade" remained under that helm?

A. I can't.

Q. Do you know whether she remained under a starboard helm until the time the second whistle signal was exchanged?

A. No, sir.

Q. You don't remember?

A. I don't remember.

Q. Do you know under what helm the "Gulftrade" was proceeding immediately prior to the time when you say the helm was put to port?

A. What helm she was under then?

Q. Immediately before you say the helm was put to port?

A. I guess she was going on a steady.

Q. Do you know, I said?

A. No, I don't.

Q. How long before the collision did you notice the red buoy to the starboard?

A. I couldn't remember.

Q. Was it after the second one-blast whistle signal was exchanged?

A. Yes, sir, as far as I remember.

Q. It was after that?

A. Yes.

Q. When did you notice that the "Gulftrade" was

proceeding on the ranges after the second one-blast signal was exchanged?

A. I couldn't remember, just after we entered the river I noticed that she was, but——

Q. Wasn't the second one-blast signal exchanged just as the "Gulftrade" entered the river?

A. I don't know.

Q. You don't know?

A. No. I know the second blast was given, but I couldn't locate the exact place.

Q. Do you know whether the "Gulftrade" was then in the Schuylkill River or not?

A. Yes.

Mr. Long: What does that mean, yes?

A. (Continued.) She was.

Q. Do you know whether the "Gulftrade" had passed the red buoy to starboard at that time?

A. I don't remember.

Q. You don't remember?

A. No.

Q. I thought you just testified that she passed the red buoy after the second-whistle signal was exchanged?

A. After the second-whistle signal was exchanged —no, I might have misunderstood your question.

Q. Now I ask you whether you passed the red buoy after the signal was exchanged?

A. I don't remember.

Q. You don't remember?

A. I don't remember.

Q. So you don't remember when you saw the red buoy?

A. I know I saw it and that we passed close by it on the starboard side.

Q. Captain, could you estimate about what time

elapsed between the second signal—exchange of the second-whistle signals and the collision?

A. I should say—I couldn't say—I wouldn't say.

Q. Was it very soon after that?

A. No, it was a little while after that.

Q. A little while after?

A. A little while after.

Q. Did you see your vessel hit any of the barges?

A. I could feel it.

Q. Did you see it?

A. I didn't see it, I felt.

Q. As a matter of fact, from your position on the "Gulftrade" you couldn't see the barges then, could you?

A. Yes, I could see them.

Q. But you didn't see that?

A. I saw them but I wasn't noticing exactly what struck or anything like that.

Q. You weren't noticing what?

A. I wasn't noticing exactly till I felt it, then I looked over and saw the barge.

Q. Where was the barge then?

A. On the bluff of our bow as we call it.

Q. Did you have to move from your position on the bridge to see the barge?

A. I just stepped so (indicating)—over a little, there was a stir you know, I just looked over to see what the trouble was, then I felt the shock, you know, of the ship.

Q. Captain, did you see any other barge with the exception of the one that you saw that you stopped for and looked over the side of the ship?

Mr. Eggleston: When?

Mr. Brown: When he looked over the side of the ship.

A. I don't remember how many there was.

Q. Did you see the barge that sank?

A. I did.

Q. Did you see any other barges?

A. Yes.

Q. Where were they at the time your vessel struck the rear barge in the tow?

A. On the port side of her.

Q. On the port side?

A. Yes.

Q. How far away from the tow was it that you noticed this sheer to which you have testified?

A. How long before?

Q. No, how far away from the barges was your vessel when you noticed this sheer?

A. I noticed this sheer just after they blowed the second blast, that their tug was sheering over toward us.

Q. I will repeat the question. About how far away from the barges was the "Gulftrade" when you noticed the sheer?

A. I suppose 200 feet or so.

Q. Still 200 feet?

A. 200 feet, as near as I can get.

Q. Captain, how did the tug sheer?

A. Toward the "Gulftrade."

Q. Did you see her sheer?

A. I did, I could see that.

Q. Were you watching?

A. I could see that.

Q. About how much did she sheer?

A. I couldn't say how much she sheered, but she sheered enough to head right across our bow—not across our bow, head onto our bow.

Q. You don't know how far she sheered, do you?

A. I don't know, but she sheered right across.

Q. As a matter of fact, that was just about the time of collision, wasn't it?

A. Yes, she started to sheer before the collision a little, you know, it was unavoidable.

Q. And at the time of the collision she was about ahead of you, was she, the tug?

A. The tug was about ahead of us.

Q. Was she maintaining the same course as the "Gulftrade?"

A. I think she was a little more sheering to starboard than we was, she kept coming over, you know.

Q. Were the "Gulftrade" and the tug on parallel courses—do you know what parallel means—at the time of the collision?

A. The tug had sheered right ahead of us, when I noticed it she was right ahead of us.

Q. That doesn't answer the question fully—at the time of the collision were the "Gulftrade" and tug on parallel courses—were they heading in the same direction?

A. I don't think we had been parallel—opposite each other.

Q. Not opposite each other, but in the same direction?

A. Yes, we was heading in the same direction in a certain way.

Q. Was he heading in the same direction as the "Gulftrade" or not?

A. He was sheering more to the right than we was, we was starboarding at the same time to avoid collision—porting I mean, going to the right.

Q. At the time of the collision how far—what distance separated the "Gulftrade" and the tug, do you know?

A. At the time of the collision?

Q. Yes.

A. I couldn't say, the bow of the steamer hid my vision, the bows of the steamer was up higher, you know, I couldn't detect.

Q. The bow of the steamer hid the tug from you at the time of collision, is that right?

A. I couldn't see exactly the spot where she struck.

Q. I say could you see the tug at the time of the collision?

A. Oh, yes.

Q. How far was the "Gulftrade" from the tug at the time of the collision?

A. From the tug?

Q. Yes.

A. Well, she was the length of a tow, that is about all I could see.

Q. About how far was that?

A. Oh, I wouldn't say the exact distance.

Q. Could you see the tug?

A. I could see the tug, yes.

Q. Now, in what direction was the tug heading at the time of the collision?

A. Well, she was heading starboard—a little starboard, not directly ahead of us, she was ahead of us, but she had her bows canted over that way. (Indicating to the right.)

Q. That was at the time of the collision?

A. At the time of the collision when I noticed that.

Q. That is when you noticed the tug?

A. Yes, I noticed it then.

Q. Was that the first time you noticed the tug prior to the collision?

A. No, sir.

Q. Was it the first time you had noticed the tug after the second-whistle signal was exchanged?

A. Oh, no, I noticed it before.

Q. You did notice it before?

A. Yes.

Q. How long before, do you know?

A. I couldn't say the time.

Q. A long time or a short time?

A. It wasn't very long.

Q. Captain, after the collision did you see the barge that was upset?

A. Yes, sir, I saw her sheer across our bow and turn over—upset.

Q. Do you know what part of your vessel struck that barge?

A. Well, we struck her slanting, this way (indicating) on the port bow, turned her around, at that time we were going astern and she sheered across our bow, I could see it.

Q. Did you notice the tug after the collision?

A. I didn't see what the tug was doing but we was trying to save that man, we threw life preservers, and even our head pumpman he jumped over to try to save him.

Q. Before the collision what was the last time that you observed the course of the "Gulftrade" with reference to the ranges?

A. We was keeping on the starboard side of the river all the time.

Q. I said when was the last time you observed the course of the "Gulftrade" with reference to the ranges?

A. A while before the collision.

Q. How long before—quite a while before?

A. Maybe 15 or 20 minutes before.

By Mr. Long:

Q. Mr. Hassell, these signals that were blown on

the "Gulftrade," did you actually blow them yourself?

A. No, sir.

Q. Your duty was to stand by the telegraph?

A. To stand by the telegraph and obey orders.

Q. That is what you did?

A. That is what I did.

Q. You were anchored when the tugs first came out to get you—your steamer?

A. I don't remember.

Q. When you proceeded up the river with the tug you have said that your engines were set at slow speed?

A. Yes.

Q. Did they continue to be set at that speed until just before the collision when you say they were reversed?

A. Yes.

Q. Do you know whether or not the tug's engines were in motion as your steamer was going up there?

A. I didn't notice, they were there to assist in docking the ship.

Q. You don't know whether they were in motion or not?

A. I don't know.

Q. You do remember passing this red buoy, about 50 feet to the starboard of the buoy?

A. About 50 feet.

Q. You left the buoy about 50 feet to the starboard of the steamer?

A. Yes.

Q. Your steamer continued to navigate up the starboard side of the channel?

Mr. Brown: Objected to with reference to this phase of the case that is leading.

Mr. Long: This is not my witness.

Mr. Brown: It is your witness with respect to the question of fault.

Q. Do you remember that just before the collision the tug captain ordered the tugs to go ahead full speed and to port their helm, did you hear that order given?

A. I didn't hear the order, they got their own signals I guess.

Q. You don't know whether it was given or not?

A. I don't know what they was given.

Q. Which way does the bow of your steamer swing when your engines are reversed?

A. Generally swings to the right.

Q. To the starboard?

A. To the starboard.

Q. You have a right-hand wheel?

A. Right-hand wheel.

Q. As I understand your testimony, after this tug sheered over toward the course of the "Gulftrade," you got an order to reverse your engines, is that right?

A. About the time of the collision, just a minute or so—a few minutes before.

Q. Did you obey that order?

A. I obeyed that order.

Q. Do you know how your engines were set at the time of the collision?

A. I should say they was going astern.

Q. You also heard an order given to the quartermaster to port his helm?

A. To port his helm, yes.

Q. Did you see him obey that order?

A. Yes.

Q. When he ported his helm, that threw the head of your vessel to starboard, you say?

A. Yes.

Q. That is right, is it?

A. Yes.

Q. You were asked to tell the distance that the tug was from the steamer after she had sheered—could you from your position on the bridge tell how far the tug was from the stem of your steamer—were you in position to see how far she was?

A. I could.

Q. You could?

A. Yes.

Q. You say she was about the length of a tow-line as near as you could estimate?

A. Yes.

Q. If these vessels had held their courses, that is the tug and tow had held her course and the "Gulftrade" had held her course, would or not the vessels have passed safely?

Mr. Brown: I object to that question as a conclusion.

A. They would.

Q. Any doubt in your mind about that at all?

Mr. Brown: Same objection.

A. No doubt.

Q. You said that the bluff of the bow of the "Gulftrade" struck one of the barges, was that the port bow of the "Gulftrade?"

A. The port bow of the "Gulftrade."

Re-direct examination.

By Mr. Eggleston:

Q. I understood you to say on cross-examination that something was unavoidable, what did you refer to then?

A. When the tugboat sheered across our bow, see, as much as he could do then—we put our engine full astern to avoid collision, but she sheered too much, it was unavoidable then, that is what I mean.

Q. Now, I understood you to say that when the second signal of one blast was exchanged the tug and the steamer were on parallel courses, is that correct?

A. We were going on the starboard side of the river, she was going on the port side of the river.

Q. Were they running in the same direction?

A. Yes, both heading up the river.

Q. You saw the tug take a sheer to starboard after that, is that right?

Mr. Brown: Objected to, that has been covered, it is leading.

A. Yes, sir.

Q. I understood you to say on cross-examination that you did not notice the barges between the time the second one-blast signal was exchanged up to the time you received the reverse order?

A. I noticed the barges.

Q. You did notice the barges?

A. Yes.

Q. Between the time the second one-blast signal was exchanged and before the reverse order was received?

A. I did notice them.

Q. Was it between that time that you saw the tug take the sheer?

A. Yes.

OPINION.

SUR TRIAL HEARING ON PLEADINGS AND PROOFS.

(Filed January 12, 1927.)

DICKINSON, J.:

This is a collision case. The collision occurred in the Schuylkill River just above its confluence with the Delaware. The channel of the Schuylkill is not wide but it is of sufficient width to permit one vessel to pass another in safety. The conditions were most favorable to safe navigation. These admitted facts compel the inference of negligence somewhere. There is concord of opinion thus far but libellant and respondents each place the blame for the collision upon the other.

The opposing fact theories of the parties are as hereinafter stated. We are unable to accept either. Their rejection forces us to a search for another, with the aid of which the proximate cause of the collision can be found. We do not have far to seek. It emerges naturally out of the fact situation.

FACT, DISCUSSION AND FINDINGS.

The entrance to the Schuylkill from the Delaware River is indicated by range light towers and its limits by buoys. The libellant vessels consisted of four heavily loaded scows in the tow of a tug. The tow was arranged in a flotilla with two scows abreast and the other two immediately behind. The tug was ahead and pulled the tow by a hawser of a proper length. This arrangement is not criticized.

The respondent vessel is a large ocean-going steamer and was moving under her own power but was being piloted by two tugs on her port side, one ahead of the other. No complaint is made of this. The master of one of the tugs was in command of the steamer and responsible for her navigation; the master of the other was assisting. The significance of these latter facts appears by their statement but will be recalled later. The tide was at about a two hours flood; the wind light, and the weather clear and fair. The time was broad daylight. Before the maneuvers, which were followed by the collision which caused the damage for which the libel was filed, the tow and the steamer were both in the Delaware River south of the Schuylkill and each bound up the latter. The channel of the Schuylkill has a charted depth at mean low water of about the draft of the steamer which was 27 feet. Neither the tug nor any scow was drawing over ten feet. This meant that the libellant was free to go to the extreme side limit of the charted channel or even beyond it but the ship was confined to near mid-channel. The speed of the steamship was about three knots over the bottom and that of the tow something less than half that speed, while the flow of the tide in the Schuylkill was almost negligible but was strong and swift in the Delaware. This meant that the tow was going through the water very slowly. Each knew of the presence of the other, and that the destination of each was up the Schuylkill. The steamer was astern of the tow. The angle at which the channel of the one river intersects that of the other is on its inside about 120 degrees. This meant that the range course was about 30 degrees east of north. The ranges could be followed only for a short distance above or to the north of the buoys, where the channel changed to a north course. The

collision occurred before this change was reached. Signals were exchanged indicating that the steamship would pass the tow on its starboard hand. The first signal was given before the steamer left the Delaware; the second before it reached the line of the buoys, and the third before the collision. The latter occurred at a point between 500 and 1000 feet north of the buoys. Just where in respect to the width of the channel cannot be found with anything approaching a satisfying certainty. Libellant has sought to fix it at a point on the extreme west limit of the channel and the respondent well east of the mid line. Where the collision took place is an all-important fact in view of the opposing theories of the parties but is of minor importance and of less controlling force in the view we have taken.

With the aid of a few admitted facts it is not difficult to visualize the occurrences. A vessel entering the Schuylkill from below its mouth must put her helm to starboard, thus making a wide arc of turn to the westward. The set of the tide in the Delaware with the effect of this swing would be to carry her stern to the eastward. This would be greatly accentuated in the case of the tail end of a tow and emphasized by the slow speed of the tow through the water. The inevitable result in this case was, because it must have been, that until the tow had been straightened out after it entered the Schuylkill, it would have been carried, more or less, athwart the channel. The steamship would have been affected in the same way but to a less degree. The first impact was of the bulge of the bow of the steamship against the starboard side of scow No. 33, which was the starboard after scow of the flotilla. The tug which was on the port bow of the steamer had dropped aft out of danger before the collision. This fact has a significance to be hereinafter no-

ticed. There was room enough and water enough for the steamer to have passed. The libellant having first fixed its own position well to the westward of the channel accounts for the collision by charging that the steamer was steered into the tow on a course much too far to the westward of mid-channel, the line of which the steamship should have followed. The steamship having fixed her position to the eastward of the mid-channel line and thus where she should have been and that of the tow well to the westward, thus affording ample room for a safe passage, accounts for the collision by charging that the tow suddenly and unexpectedly veered to the eastward directly in the course of the steamship and caused the collision before the latter could, in spite of every effort, avoid it. The place of contact is thus seen to have a direct bearing upon the correctness of these opposing theories.

As already stated, we are unable to accept either. In the first place, the libellant fixes the place of collision at a point so far to the westward that it is at least doubtful whether the steamship could have approached it without going aground, and certain it is that there was no reason for her going so far to the westward and every probability that she did not. In the second place, there is a like improbability that the tug sheered to the eastward because there was no reason for her to do so, and even if she did, the first effect of the movement would have been to have carried the stern scows not into but away from the course of the steamship. Each theory is hung upon a fact so improbable that it cannot be found. This is no reflection upon the testimony of the witnesses which is argued to support these respective theories. The explanation of all such testimony is to be found in the truth that observers in all such occurrences almost always tes-

tify to facts which they have inferred and confuse them with those which they have witnessed. What, then, is the true theory upon which the cause may be determined. We have the fact that the collision was a rear end one and that the steamship came up from behind. This placed upon her the duty not to pass until there was room for her to pass with safety. She had signalled her intention to pass and that she would pass on the starboard side. The tug in charge of the tow knew that the steamship must hug more or less closely mid-channel, whereas the tug and its tow were not so restricted. This made it the duty of the tug to keep well to the westward and this we find as a fact it did so far as the conditions present did not prevent. One condition was, as already stated, that the set of the tide swung the tail of the tow to the eastward and more or less athwart the channel until it had straightened out. It can thus easily be found that the tow was close to mid-channel as the swing into the Schuylkill was about completed. This, however, was a condition which the steamship was bound to anticipate and doubtless did. What happened was that the navigator of the ship expecting the tow would go to the westward and seeing it was so headed assumed it would be out of his way by the time he reached the passing point and that a passage up mid-channel would be clear. In this he miscalculated and hence the collision. The tug appreciating the danger had time to ease loose and get out of the way. The fact that the towing tug to counteract the second swing of her tow and straighten it out ported her helm for a moment is of no significance. It was a called-for thing to do and did not contribute to the collision.

This results in a finding of negligence against the respondent and a refusal to find negligence on the part of the libellant. These findings we formulate,

together with the conclusion of law which flows from them, as follows:

FINDINGS OF FACT.

1. The respondent steamer was guilty of negligence which was the proximate cause of the collision and consequent damage.

2. The libellant's tug was guilty of no negligence.

CONCLUSIONS OF LAW.

1. The libellant may recover its damages, with costs.

It will be noticed that the steamship, the piloting tugs and the owners of the latter have been all made respondents. Assuming the negligence of the steamship, there is no doubt of her responsibility, as she did the damage. We make the fact finding that the tug owners (through their servants the masters of the piloting tugs) were the navigators of the steamship whose negligence, in which all the individual respondents participated, was the proximate cause of the damage done. We conclude from this the liability of such owners. The remaining question is the responsibility of the tug respondents in rem. The fact finding is made that up to the point of time when the collision was imminent the tugs themselves had no part in the movement of the steamship. She was moved by her own power and was towing the tugs. All the tugs did was done in the effort to lessen the consequences of the collision and in no sense was a contributing cause.

The conclusion reached is that the tugs are not answerable in damages and that the libel as against them should be dismissed without costs.

The judgment reached is in accord with all the cases cited, among which are:

The Aureole, 224 C. C. A.;
Luckenbach, 163 Fed. Rep. 755;
C. R. Spencer, 173 Fed. Rep. 862;
The Atlantis, 119 Fed. Rep. 568;
Atlas v. Lee, 235 Fed. Rep. 492;
Queen City, 189 Fed. Rep. 212;
Menominee, 197 Fed. Rep. 529;
Gladys, 155 Fed. Rep. 653.

The draft of a decree in conformity with this opinion may be submitted.

FINAL DECREE.

(Filed February 23, 1927.)

And now, to wit; this 23rd day of February A. D. 1927, the above cause having come on to be heard, testimony of the witnesses having been taken, the case having been argued by counsel and considered by the Court, and the Court having filed its opinion wherein it found that the collision herein resulted from the fault of the steamship "Gulftrade" and of Independent Pier Company at the time in charge of the navigation of the said steamship "Gulftrade," through its employe, the master of the steam tug "Triton," and having found that the libellant was guilty of no negligence, it is on motion of Acker, Manning & Brown, Esqs., proctors for the libellant, ordered, adjudged and decreed:

1. That the libellant in the above entitled cause recover of Independent Pier Company, one of the

respondents herein, primarily and from the steamship "Gulftrade" and its stipulator, secondarily, the amount of its damages arising out of the matter set forth in the libel herein, together with interest and costs, and that the said steamship be condemned therefor. Execution against the S. S. "Gulftrade" and its stipulator only to be had in the event of failure to collect against the Independent Pier Company.

2. That the libel herein be dismissed as against the steam tug "Triton" her claimant and stipulator, steam tug "Churchman, her claimant and stipulator, and respondent Alfred C. Churchman, without costs.

3. That unless proceedings herein be stayed upon appeal filed within the time and in the manner prescribed by law, and particularly by the Act of Congress of the United States of America approved April 10th, 1926, and by the rules and practice of this Court, a further decree may be presented herein, final, if the amount of damages be agreed upon or referring the cause to a commissioner to ascertain and compute the amount of damages in the absence of such agreement.

By the Court,

DICKINSON,

U. S. D. J.

PETITION FOR APPEAL OF INDEPENDENT PIER CO.

(Filed March 3, 1927.)

The petition of Independant Pier Campany, a corporation incorporated and existing under the laws of the State of Pennsylvania, one of the respondents in the above case, respectfully represents;

1. That your petitioner is a part owner of the tug "Triton" and is one of the respondents in the above entitled cause. The libellant filed its libel on the seeking to recover its damages resulting from the collision occurring in the Schuylkill River on or about October 1, 1923, between the steamer "Gulftrade" and two of libellant's scows, which together with two other scows were at the time in tow of libellant's tug "Taurus." The steamer "Gulftrade" at the time was being transported up the river under her own power, with the tug "Triton," of which respondent was part owner, made fast to her port quarter and the tug "F. C. Churchman," of which Alfred C. Churchman, one of the other respondents is part owner, was made fast to her port bow. The master of the "Triton" was on the steamer's bridge directing her navigation.

The case was subsequently tried and the Court filed its opinion dismissing the libel as against the Gulf Refining Co., owner of the "Gulftrade," and as against the two tugs "Triton" and "Churchman," and holding the libellant's vessels to be without fault, and holding the respondent A C. Church-

man and your petitioner and the steamer "Gulftrade" in fault for the collision.

On the 23rd day of February, 1927, the Court entered its decree dismissing the libel as against respondent, Alfred C. Churchman, and as against the tugs "Triton" and "F. C. Churchman," and holding libellant to be without fault, and directing that the libellant should recover primarily against your petitioner and secondarily against the steamer "Gulftrade."

Your petitioner believes the said interlocutory decree is erroneous and that injustice would be done if the said decree should be carried into effect.

Wherefore your petitioner prays for leave to appeal from the said interlocutory decree entered in the above case, to the Circuit Court of Appeals for the third circuit.

INDEPENDENT PIER COMPANY,
By CLINTON SHEETS,
President.

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA, } *ss.*

CLINTON L. SHEETS, being duly sworn according to law deposes and says that he is president of the Independent Pier Co., the petitioner named in the foregoing petition, that he has read the said petition, knows the contents thereof and that the same is true to the best of his knowledge, information and belief; that the said appeal from the interlocutory decree of the District Court in said case is not taken for delay, but because the petitioner and

its officers together with its proctor of record, believe that injustice would be done if the decree were carried into effect.

CLINTON SHEETS.

Sworn to and subscribed before me this 3rd day of March, 1927.

JENNIE A. RUCH,
(Seal) *Notary Public.*
My commission expires March 2, 1929.

ORDER ALLOWING PETITION FOR APPEAL.

Before DICKINSON, Judge:

And now, to wit, this 4th day of March, 1927, Independent Pier Company, one of the respondents in the above entitled case comes into Court with this petition and prays an appeal from the interlocutory decree entered in the above entitled case by the District Court of the United States, for the eastern district of Pennsylvania, to the next Circuit Court of Appeals for the third circuit and thereupon the appeal is allowed, and it is directed that the petitioner shall not be required to enter any further bond on appeal.

By the Court.

Attest:
LEO A. TILLY,
Deputy Clerk.

ASSIGNMENTS OF ERROR OF INDEPENDENT PIER CO.

(Filed March 2, 1927.)

The Independent Pier Company, one of the respondents in the above entitled case, hereby assigns error in the ruling, decisions and decree of the District Court of the United States, Eastern District of Pennsylvania, on the following grounds.

1. In that the Court entered an interlocutory decree in favor of libellant and against respondent.

2. In that the Court failed to dismiss the libel with costs as against this respondent.

3. In that the Court failed to decree that this respondent was under no liability whatever to libellant.

4. In that the Court failed to find that the tug "Taurus" was not in charge of a competent person.

5. In that the Court failed to find that those in charge of the navigation of the "Taurus" were incompetent and inattentive to their duties, and brought about the collision.

6. In that the Court refused to hold that the "Taurus" failed to keep proper lookout.

7. In that the Court refused to find that the "Tau-

rus" with her tow failed to navigate in accordance with the whistle signals exchanged with the "Gulftrade."

8. In that the Court refused to find that the "Taurus" with her tow unnecessarily and unduly crowded upon the course of the "Gulftrade."

9. In that the Court refused to find that the "Taurus" failed to keep her tow trailing properly behind her.

10. In that the Court refused to find that the "Taurus" sheered across the course of the "Gulftrade" and brought about the collision.

11. In that the Court refused to find that the "Taurus" caused or permitted her tow to sheer across the course of the "Gulftrade" and brought about the collision.

12. In that the Court refused to find that the "Taurus" caused or permitted her barge No. 18 to sheer to starboard and into collision with the "Gulftrade" on the starboard side of the channel.

13. In that the Court refused to find that the "Taurus" failed to take proper precautions to prevent the collision.

14. In that the Court refused to find that the "Taurus" with her tow failed to navigate to the westward of the deep water channel which her light draft entitled her to do with safety and which the passing signals exchanged between the "Gulftrade"

and the "Taurus" required that the "Taurus" and her tow should do.

15. In that the Court improperly located the point of collision.

16. In that the Court found that the "Taurus" did not sheer to her starboard and cause the collision.

17. In that the Court found the "Taurus" fulfilled her duty under the passing signals exchanged between her and the "Gulftrade" and kept to the westward as far as the conditions did not prevent.

18. In that the Court found that the navigator of the "Gulftrade" made a miscalculation and brought about the collision.

19. In that the Court found that the admitted direction of the "Taurus' " course to her starboard had no significance and did not contribute to the collision and that the same was a proper maneuver.

20. In that the Court found that the "Taurus" and her tow and those in charge of them were not guilty of negligence which caused the collision.

21. In that the Court found that the negligence of the master of the "Triton" was the approximate cause of collision.

22. In that the Court failed to find that the collision was solely caused by the improper navigation of the "Taurus" and her tow.

The said respondent appellant prays that the said interlocutory decree may be reversed and that it be restored to all things which it has lost by reason of the same, and that it may have such other and further relief as may be just.

PETITION OF GULF REFINING COMPANY, INC., CLAIMANT AND OWNER OF STEAMSHIP "GULFTRADE," FOR APPEAL FROM INTERLOCUTORY DECREE DATED AND FILED FEBRUARY 23RD, 1927.

(Filed March 10, 1927.)

To the Honorable, the Judges of the said Court:

The petition of Gulf Refining Company, Inc., a corporation duly organized and existing under the laws of the State of Texas, claimant of the steamship "Gulftrade," one of the respondents in the above entitled cause, respectfully represents:

1. That on January 3rd, 1924, a libel *in rem* and *in personam* was filed in the above entitled cause by the Charles Warner Company, a corporation, as owner of the barges No. 18 and No. 33, and as charterer and bailee of the barge No. 44 and as owner of the cargoes laden on the said barges, against the steamship "Gulftrade" and the other respondents named in the caption hereof, to recover damages alleged to have been suffered by libellant by reason and in consequence of a collision of said steamship "Gulftrade" with the said barges No. 18 and No. 33 in tow (with said barge No. 44 and another barge

No. 53) of the tug "Taurus," owned by libellant, on October 1st, 1923, in the Schuylkill River, Philadelphia, Pennsylvania, while said barges in tow of said tug "Taurus" were proceeding up said river, and said steamship "Gulftrade" was being transported up said river under her own power in charge of the tug "F. A. Churchman" made fast to her port bow and the tug "Triton" made fast to her port quarter, with the master of said tug "Triton," an employe and servant of the Independent Pier Company, on the bridge of the "Gulftrade" directing the navigation of said steamship and transporting tugs. That service of the citation and of the attachment issued upon said libel was duly accepted by and in behalf of all respondents; that your petitioner duly appeared as claimant of said steamship "Gulftrade;" and that answers were duly filed by your petitioner and by all other respondents and claimants.

2. That after trial and hearing on pleadings, proofs, oral arguments and written briefs, submitted by the respective parties in interest, your Honorable Court, on February 23rd, 1927, entered an interlocutory decree reciting in effect that said collision resulted from the fault of said steamship "Gulftrade" and of the Independent Pier Company, which was in charge of the navigation of said steamship, and that the libellant and its vessels, employes and servants were without fault, and directing that libellant recover its damages of the Independent Pier Company, primarily, and of said steamship "Gulftrade" and its stipulator, secondarily, execution against said steamship "Gulftrade" and its stipulator only to be had in the event of failure of libellant to collect against the said Independent Pier

Company, and dismissing the libel as against all other respondents and claimants.

3. That on March 8, 1927, the said Independent Pier Company filed its petition for appeal from said interlocutory decree, together with assignments of error, and on the same date your Honorable Court entered an order allowing said petition for appeal. That on March 8, 1927, proctors for libellant and for said Independent Pier Company entered into and filed of record a stipulation respecting the record to be sent up and certified to the Circuit Court of Appeals on said appeal of the Independent Pier Company.

4. Your petitioner believes that the said interlocutory decree is erroneous, and that injustice would be done if said interlocutory decree should be carried into effect or if a final decree should be entered in accordance with the said interlocutory decree, and that a decree should be entered dismissing the libel as against the said steamship "Gulftrade" and as against your petitioner as claimant and owner of said stemship "Gulftrade."

Wherefore, your petitioner prays for leave to appeal from the said interlocutory decree to the next term of the Circuit Court of Appeals for the third circuit, and that such further transcript of the record (in addition to the transcript upon the said appeal of the Independent Pier Company heretofore entered) as may be necessary and proper in the circumstances, duly authenticated, may be certified to the said Circuit Court of Appeals, and that the usual citation may issue to the end that said inter-

locutory decree may be reviewed by the said Circuit Court of Appeals upon said record, as well as upon the record on the said appeal of the Independent Pier Company, and upon the errors alleged in the assignments of error filed herewith, and such order made or decree entered by said Circuit Court of Appeals as in law and justice may be proper in the premises.

GULF REFINING COMPANY, INC.,
By H. ALAN DAWSON,
Attorney.

H. ALAN DAWSON,
BIDDLE, PAUL, DAWSON & YOCUM,
BURLINGHAM, VEEDER, MASTEN & FEAREY,
Proctors for Petitioner.
March 10th, 1927.

UNITED STATES OF AMERICA,
STATE AND EASTERN DISTRICT OF PENNSYLVANIA, } *ss.*
CITY AND COUNTY OF PHILADELPHIA,

H. ALAN DAWSON, being duly sworn according to law, deposes and says:

I am one of the proctors of record for the Gulf Refining Company, Inc., claimant and owner of the steamship "Gulftrade," the petitioner named in the foregoing petition, and by it duly instructed as to the facts and authorized to execute, verify and file said petition in its behalf.

I have read over said petition and know the contents and the allegations thereof, and the same are true to the best of my knowledge, information and belief.

The said appeal from said interlocutory decree is not taken for delay, but because the said petitioner, and your deponent, and the other proctors of record for petitioner, verily believe that injustice has been done said steamship "Gulftrade" and said petitioner, and that further injustice would be done them if the said interlocutory decree were carried into effect.

The reason this verification is not made by said petitioner is that it is a corporation organized and existing under the laws of the State of Texas, and has no officer presently available within the district to so verify, but has duly requested and authorized deponent to make this verification.

H. ALAN DAWSON.

Sworn and subscribed to before me this 10th day of March, A. D. 1927.

M. MEANEY,

(Notarial seal) *Notary Public.*

My commission expires April 22, 1929.

ORDER ALLOWING PETITION FOR APPEAL.

(Filed March 10, 1927.)

Before DICKINSON, Judge:

And now, to wit, this 10th day of March, A. D. 1927, upon consideration of the foregoing petition of Gulf Refining Company, Inc., claimant and owner of the steamship "Gulftrade," and upon motion of H. Alan Dawson, Esquire, of proctors for petitioner, it is ordered by the Court that the appeal prayed for therein be and the same is hereby allowed, and

that petitioner shall not be required to enter any further bond on appeal.

By the Court.

Attest:

LEO A. TILLY,
Deputy Clerk.

ASSIGNMENTS OF ERROR IN BEHALF OF GULF REFINING COMPANY, INC., CLAIMANT AND OWNER OF S. S. "GULFTRADE."

(Filed March 10, 1927.)

The Gulf Refining Company, Inc., a corporation duly organized and existing under the laws of the State of Texas, claimant and owner of the steamship "Gulftrade," one of the respondents in the above entitled cause, having filed herewith and had allowed by the Court its petition for appeal from the interlocutory decree of the District Court of the United States for the Eastern District of Pennsylvania, dated and filed February 23rd, 1927, hereby respectfully assigns error of the said Court in its rulings, findings, conclusions, opinion and interlocutory decree, as follows, to wit:

1. In finding that the steamship "Gulftrade" was guilty of negligence which was the proximate cause of the collision and consequent damage.

2. In finding in effect that the attempt of the steamship "Gulftrade" to pass the tug "Taurus" and tow, was undertaken prematurely.

3. In finding in effect that the Master of the tug "Triton," in charge and directing the navigation of the steamship "Gulftrade," made a miscalculation of distance and conditions in undertaking to pass the tug "Taurus" and tow.

4. In failing to find that the navigation of the steamship "Gulftrade" was proper.

5. In failing to find that the steamship "Gulftrade" was not guilty of any fault or negligence.

6. In finding in effect that there was no negligence on the part of the libellant, its employes and servants.

7. In finding that libellant's tug "Taurus" was guilty of no negligence.

8. In failing to find that the tug "Taurus" was not in charge of a competent person.

9. In failing to find that the tug "Taurus" did not keep a proper lookout.

10. In failing to find that the tug "Taurus" did not navigate in accordance with the whistle signals she exchanged with the steamship "Gulftrade."

11. In failing to find that the tug "Taurus" unnecessarily and unduly crowded upon the course of the steamship "Gulftrade."

12. In failing to find that the tug "Taurus" did not keep her tow tailing properly behind her after

consenting to a passing by the steamship "Gulftrade."

13. In failing to find that the tug "Taurus" sheered to her starboard and across the course of the steamship "Gulftrade" as the latter was properly attempting to pass.

14. In failing to find that the tug "Taurus" caused or permitted barge No. 33 and barge No. 18 to sheer to starboard and into collision with the steamship "Gulftrade" as the latter was properly attempting to pass.

15. In failing to find that the tug "Taurus" did not take proper precautions to avoid the collision.

16. In failing to find that the tug "Taurus" and its tow neglected to navigate and keep sufficiently far to port, westward, after assenting to the passing by the steamship "Gulftrade" and while the latter vessel was properly attempting to pass.

17. In finding that the change of course of the tug "Taurus" to her starboard as the steamship "Gulftrade" was about to properly pass, was a proper maneuver and did not cause or contribute to the collision.

18. In failing to find that libellant's barges No. 18, No. 33 and No. 44 were not respectively in charge of competent persons.

19. In failing to find that libellant's barges No. 18, No. 33 and No. 44 did not keep proper lookouts.

20. In failing to find that libellant's barges No. 18 and No. 33 sheered or negligently drifted to starboard, eastward, and into collision with the steamship "Gulftrade" as the latter was properly attempting to pass.

21. In failing to find that libellant's barges No. 18 and No. 33, and libellant's employes and servants in charge of said barges, did not take proper precautions to avoid the collision.

22. In finding that the set of the tide caused libellant's barges to get out of line with the tug "Taurus" and too close to the course of the steamship "Gulftrade," and that in other respects the set of the tide was a material contributing factor in the collision.

23. In failing to find that the collision occurred on the starboard, eastward, side of the deep draft channel as marked by the buoys.

24. In failing to find that there was a material variance between libellant's allegations and proofs which bars recovery by libellant.

25. In finding that, although libellant's version could not be accepted, libellant is nevertheless entitled to a decree for its damages.

26. In concluding and directing that libellant may recover its damages with costs.

27. In concluding that, although the steamship "Gulftrade" was in charge of and navigated by the employe of the Independent Pier Company and the

tugs "F. A. Churchman" and "Triton," the said steamship is nevertheless liable to libellant secondarily and in the event that libellant fails to collect its damages from the Independent Pier Company.

28. In concluding that, assuming negligence on the part of the masters of the tugs "F. A. Churchman" and "Triton," or either of them, in the navigation or transporting of the steamship "Gulftrade," the libel must, nevertheless, be dismissed as against said tugs "F. A. Churchman" and "Triton."

29. In entering the said interlocutory decree.

30. In failing to enter a decree dismissing the libel as against the steamship "Gulftrade," its claimant, owner and stipulator, with costs.

31. In failing to enter a decree against the tugs "F. A. Churchman" and "Triton" in accordance with the findings and conclusions of fault and negligence.

H. Alan Dawson,
Biddle, Paul, Dawson & Yocum,
Burlingham, Veeder, Masten & Fearey,
Proctors for Gulf Refining Co., Inc., Petitioner,
March 10th, 1927.

STIPULATION OF COUNSEL AS TRANSCRIPT OF RECORDS.

(Filed March 8, 1927.)

It is hereby stipulated and agreed by and between Acker, Manning & Brown, proctors for libellant and Howard M. Long, proctor for Independent Pier Co., that the transcript of record, sur appeal shall constitute the following.

Docket entries.
Libel.
Answer Independent Pier Co.
Testimony with exhibits.
Opinion of the Court.
Interlocutory decree.
Petition for appeal and order thereon.
Assignments of error.
This stipulation.
Certificate of the clerk.

ACKER, MANNING AND BROWN,
Proctors for Libellant.
HOWARD M. LONG,
Proctor for Independent Pier Co.

PRAECIPE FOR MAKING UP RECORD ON APPEAL OF GULF REFINING COMPANY, INC.

(Filed March 19, 1927)

To the Clerk of the District Court of the United States for the Eastern District of Pennsylvania:

Please certify the following papers and documents (in addition to and include with the papers and documents set forth in the stipulation of counsel dated and filed March 8, 1927, sur the appeal of Independent Pier Company) to complete the full record to be transmitted to the Circuit Court of Appeals for the third circuit in the matter of the appeal of Gulf Refining Company, Inc., claimant and owner of S. S. "Gulftrade," so that the papers and documents on both appeals will be included in a single record:

1. Answer of Gulf Refining Company, Inc., owner and claimant of the S. S. "Gulftrade."

2. Testimony, exhibits and stipulations in behalf or for the benefit of the S. S. "Gulftrade" and Gulf Refining Company, Inc.

3. Petition for appeal of Gulf Refining Company, Inc., claimant and owner of S. S. "Gulftrade," and order allowing said petition.

4. Assignments of error in behalf of Gulf Refining Company, Inc., claimant and owner of S. S. "Gulftrade."

5. This praecipe for making up record.

6. Certificate of the clerk.

H. ALAN DAWSON,
BIDDLE, PAUL, DAWSON & YOCUM,
BURLINGHAM, VEEDER, MASTEN & FEAREY,
Proctors for Gulf Refining Company, Inc., Claimant and Owner of S. S. "Gulftrade."

March 18th, 1927.

ACCEPTANCE OF SERVICE AND STIPULATION.

We hereby accept service of copies of the foregoing praecipe for making up record on appeal of Gulf Refining Company, Inc., dated March 18th, 1927, and agree that the papers and documents therein mentioned shall constitute the transcript of record upon the appeal of Gulf Refining Company, Inc.

ACKER, MANNING AND BROWN,
Proctors for Libellant.

HOWARD M. LONG,
Proctor for Independent Pier Company, Alfred C. Churchman, steam tug "Triton" and Claimant and steam tug "F. A. Churchman" and Claimant.

March 19th, 1927.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA, } *Sct.*

I, GEORGE BRODBECK, clerk of the District Court of the United States for the Eastern District of Pennsylvania, do hereby certify that the annexed and foregoing is a true and faithful copy of so much of the pleas and proceedings; in the case of Charles Warner Company v. Steamship "Gulftrade," et al., No. 1, of 1924, in admiralty; as per stipulations filed, copies of which are hereto annexed, the transcript of record in the above entitled cause is to include now remaining among the records of the said court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said District Court at Philadelphia, this day of March in the year of our Lord one thousand nine hundred and twenty-seven and in the one hundred and fifty-first year of the Independence of the United States.

GEORGE BRODBECK,
Clerk.

(Seal)

Oct. 9. 1876. Soundings in feet taken at low water.

THE ATLANTIC REFINING COMPANY
PHILADELPHIA

approx. 1000 feet Jetty west bank Schuylkill

Low water shore line

Ship Channel

Ship Channel

Shoal time low water

East bank entrance Schuylkill

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE THIRD CIRCUIT.

No. 3633. March Term, 1927.

Independent Pier Company,
Appellee.

v.

Charles Warner Company,
Appellant,

No. 3634. March Term, 1927.

Steamship "Gulftrade," Whereof Gulf Refining Company is Claimant,
Appellant,

v.

Charles Warner Company,
Appellee.

And afterwards, to wit, the eleventh day of May, 1927, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Joseph Buffington, Honorable Victor B. Woolley and Honorable J. Warren Davis, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the seventh day of June, 1927, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE THIRD CIRCUIT.

No. 3633. March Term, 1927.

Independent Pier Company,
Appellant,

v.

Charles Warner Company,
Appellee.

No. 3634. March Term, 1927.

Steamship "Gulftrade," Whereof Gulf Refining Company is Claimant,
Appellant,

v.

Charles Warner Company,
Appellee.

OPINION OF THE COURT.

(Filed June 7, 1927.)

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Before BUFFINGTON, WOOLLEY and DAVIS, *Circuit Judges.*

BUFFINGTON, *Circuit Judge:*

This case grows out of a collision between the steamship "Gulftrade," and a fleet of sand and gravel

scows which took place on the Schuylkill River just off the Delaware River. The collision took place in broad daylight and under navigable conditions which made it really inexcusable and inexplicable except through the fault of those concerned. Both the four scows under tow and the "Gulftrade" following, were coming up the Delaware River to round into the Schuylkill River. The theory of the "Gulftrade" was that when the collision occurred she was in the channel and that the "Taurus" which was towing the scows took a sheer and drove into her. The theory of the scows was that they were in proper place over near the west bank of the Schuylkill and while they were in that position the "Gulftrade" took a sheer and drove into them. The trial Judge held neither sheer theory was supported and we are of opinion he was right. It is entirely unreasonable to believe that either party took the sheer charged against it. It is unreasonable to suppose that the "Taurus" if she and her tow were out of the channel took a sheer to get into it and it is equally unreasonable to believe that if the "Gulftrade," accompanied by the "Triton" and the "Churchman," was in the channel it took a sheer out of it and ran into the scows. The Court below held the "Gulftrade" in fault, a conclusion which commends itself to us, but it found the scows without fault, a conclusion which does not commend itself to us, as we find both parties in fault and are of opinion the decree below should be modified to the extent of so holding and a dividing of damages equally between the two parties, with allowance of costs to neither. Our reasons for so holding we now state and which it seems to us the proofs and circumstances warrant.

Both parties were coming up the Delaware. There

was some wind with them as well as the tide. Therefore, we have a situation where the Delaware, as well as the impetus of the vessels, tended to push them up stream. On the other hand the proof is that the mouth of the Schuylkill forms an eddy of dead water. With these two basic conditions what would naturally happen? The "Taurus" with the scows came up the Delaware and rounded into the Schuylkill. She had several hundred feet of scows and hawsers following her. The scows were heavily loaded with sand and gravel, and naturally from the impulse of the tug, the wind and the tide, had a very considerable dead weight straight-ahead impetus. It would, therefore, take some time for the "Taurus" to pull the first breast of barges out of the Delaware tide into the Schuylkill dead water and it would take still further time to pull the last breast of the heavy laden scows in the same direction. The result would naturally be that while the "Taurus" may have been and probably did get to the westward of the channel herself that the tail-end of her tow was considerably out into the mid-channel of the Schuylkill and it would take time to straighten out her tow. We are satisfied from the proof and the circumstances that the tail of the tow was still in the channel when the collision occurred. What, meanwhile, had happened to the "Gulftrade?" She came up under the same conditions accompanied by the tugs "Triton" and "Churchman," with the captain of the "Triton" on the bridge controlling her navigation. Her length was substantially that of the "Taurus's" tow. When her bow, at the slow rate of speed she was going, was turned into the dead water of the Schuylkill her stern was naturally swinging farther and farther up the Delaware, so that she too had to round up also from

her position, and meanwhile, her stern being carried up the Delaware, her bow naturally tended over toward the western bank of the Schuylkill and headed in that direction while she was being straightened out. Now it seems to us that both parties were in fault. When the whistle of the "Gulftrade" blew the "Taurus" certainly was not in a position to let the "Gulftrade" pass in safety, but she nevertheless agreed that the "Gulftrade" come ahead. Later on the "Gulftrade," evidently became anxious, and blew another blast, to which the "Taurus" gave the same consent to go ahead, and while there is some question as to whether the "Gulftrade" blew a third blast and got the same consent, we are inclined to think she did. Now, it seems to us that under the circumstances the "Taurus" was in fault in giving these three consents to the "Gulftrade" to come ahead, relying too much on her ability to get out of the channel. Evidently the "Taurus" miscalculated the situation. So, also, it seems the "Gulftrade" was at fault. She was the following vessel. All she had to do was to hold back and not run into the scows. She certainly saw danger ahead when she gave the second signal and she certainly saw it more imminent when she gave the third signal. It was quite clear that she did go ahead and took an equal chance with the "Taurus" on the ability of the latter to give her free channel-way to pass. The result was a needless collision. It seems to us that the seat of the trouble is the fact that large vessels want the tugs to get out of the road and tugs want the big vessels to make a detour and keep out of their road. The case is not even one of an ocean vessel hurrying along on the high seas, but here both parties were making a manœuver at slow speed and they could well afford the time to do it

in a way and a delay that would have avoided this collision.

The decree below, as modified in accordance with these views, will therefore be affirmed.

Endorsed:

Opinion of the Court by BUFFINGTON, *J.*

Received and filed June 7, 1927.

SAUNDERS LEWIS, JR., *Clerk.*

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE THIRD CIRCUIT.

No. 3633 (List No. 62). March Term, 1927.

Independent Pier Co., et al.,
Appellants,

v.

Charles Warner Co.,
Appellee.

ORDER MODIFYING DECREE—3633.
(Filed June 7, 1927.)

Appeal from the District Court of the United States, for the Eastern District of Pennsylvania.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby modified, with instructions to the said District Court to enter a new decree awarding to the libellant only one-half of its damages arising out of the matters set forth in the libel, without costs to either party as against the other.

Philadelphia,
June 7, 1927.

Per Curiam,
BUFFINGTON,
Circuit Judge.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE THIRD CIRCUIT.

No. 3634 (List No. 65). March Term, 1927.

Gulf Refining Co.,

Appellant,

v.

Charles Warner Co.,

Appellee.

ORDER MODIFYING DECREE—3634.
(Filed June 7, 1927.)

Appeal from the District Court of the United States, for the Eastern District of Pennsylvania.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby modified, with instructions to the said District Court to enter a new decree awarding to the libellant only one-half of its damages arising out of the matters set forth in the libel, without costs to either party as against the other.

Philadelphia,
June 7, 1927.

Per Curiam,

BUFFINGTON,
Circuit Judge.

IN THE

United States Circuit Court of Appeals,

FOR THE THIRD CIRCUIT.

No. 3633. March Term, 1927.

INDEPENDENT PIER COMPANY,
Appellant,

v.

CHARLES WARNER COMPANY,
Appellee.

No. 3634. March Term, 1927.

STEAMSHIP "GULFTRADE," WHEREOF GULF REFINING COMPANY IS CLAIMANT,
Appellant,

v.

CHARLES WARNER COMPANY,
Appellee.

PETITION ON BEHALF OF APPELLEE FOR REARGUMENT.

To the Honorable, the Judges of the said Court:

The petition of the Charles Warner Company, a corporation, the above-named appellee, respectfully represents:

1. That the above litigation involves a collision in the Schuylkill River between scows in tow of the tug "TAURUS" owned by the appellee here, the libellant below, and the Steamship "GULFTRADE."

2. That at the time of the collision, the "TAURUS" and its tows, constituted the overtaken vessel, and the steamship "GULFTRADE," the overtaking vessel.

3. That upon pleadings and proofs the District Court found the "GULFTRADE" to be wholly at fault and directed that a decree be entered in favor of the appellee, the libellant in the Court below.

4. That an appeal was taken from the decree entered in accordance with the said opinion, and that after argument duly had on June 7th, your Honorable Court filed its opinion.

5. That on June 7th, your Honorable Court filed its opinion in the above-entitled case, directing that the decree of the Court below be modified.

6. That in the said opinion, this Honorable Court found the tug "TAURUS" and the steamship "GULFTRADE" both at fault for the collision, the subject of this litigation.

7. That your Honorable Court based the fault of the tug "TAURUS" upon the following finding:

> "When the whistle of the 'GULFTRADE' blew, the 'TAURUS' certainly was not in a position to let the 'GULFTRADE' pass in safety, but she, nevertheless, agreed that the 'GULFTRADE' come ahead. Later on the 'GULFTRADE' evidently became anxious and blew another blast, to which the 'TAURUS' gave the same consent to go ahead, and while there is some question as to whether the 'GULFTRADE'

blew a third blast and got the same consent, we are inclined to think she did. Now it seems to us that under the circumstances, the 'TAURUS' was in fault in giving these three consents to the 'GULFTRADE' to come ahead, relying too much on her ability to get out of the channel."

8. That your petitioner respectfully suggests that there is no testimony which shows that at the time the whistle of the "GULFTRADE" blew, the "TAURUS" "certainly was not in a position to let the 'GULFTRADE' pass in safety"; and further respectfully suggests that there is no testimony which shows that at the time the passing signals were exchanged, that this was the situation.

9. That your petitioner is advised and believes, and therefore respectfully avers, that after the exchange of the passing signals, it was the duty of the "TAURUS" to maintain her course and speed, and that this Court has found that she performed this duty.

10. That your petitioner is advised and believes, and therefore respectfully avers, that after the exchange of the passing signals, it was the duty of the "GULFTRADE," the overtaking vessel, to keep out of the way of the "TAURUS" and its tow, and to select the place of passage, and to keep at a safe distance in attempting to pass, and that this Honorable Court has found that the said steamship "GULFTRADE" failed to perform this duty.

11. That as there is no evidence in the record in this case that the "TAURUS" was not in a position to let the "GULFTRADE" pass in safety, your petitioner is advised by counsel, and believes, and therefore avers that the said tug "TAURUS" was not at fault for assenting to the passing signal of the steamship "GULFTRADE."

12. That your petitioner is advised and believes, and therefore respectfully avers that the assenting signal given by the "TAURUS" in answer to the signal of the "GULFTRADE" for a passage to the starboard of the "TAURUS," constituted nothing more than an expression of an understanding of what the "GULFTRADE" proposed to do, and an agreement not to thwart it, and under the law the "GULFTRADE" still remained the sole judge as to the matter of safety of the passage at the point selected, and upon it was the risk of the maneuver and the burden to keep out of the way. *Atlas Transport Co. v. Lee Line Steamers,* 235 Fed. 492 C. C. A. 8th Cir. (1916); petition for rehearing refused, 238 Fed. 349 C. C. A. 8th Cir. (1916); petition for writ of certiorari refused, *Lee Line Steamers v. Atlas Transport Co.,* 243 U. S. 643.

13. That your petitioner is advised and believes, and therefore respectfully avers that the effect of the decision heretofore rendered in this case by this Honorable Court is to place the risk and burden of the passage in so far as the navigation of the overtaking vessel is concerned partly upon the overtaken vessel, which is contrary to the rules and the decisions in this and other circuits.

WHEREFORE your petitioner respectfully prays for a rehearing herein, and for such other and further relief as in law and in justice he may be entitled to receive.

And your petitioner will ever pray, etc.

CHARLES WARNER COMPANY,

By ACKER, MANNING & BROWN,
Proctors for Appellee.

CERTIFICATION.

I hereby certify that the foregoing petition is filed in good faith; and that in my opinion the relief therein prayed for should be granted.

EVERETT H. BROWN, JR.,
Of Counsel.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE THIRD CIRCUIT.

No. 3633 (List No. 62). March Term, 1927.

Independent Pier Co., et al.,
Appellants,

v.

Charles Warner Co.,
Appellee.

SUR PETITION FOR REHEARING.
(Filed August 23, 1927.)

AND Now, to wit, on August 19, 1927, after due consideration, the petition for hearing in the above-entitled case is hereby denied.
Philadelphia,

VICTOR B. WOOLLEY,
Circuit Judge.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE THIRD CIRCUIT.

No. 3634 (List No. 65). March Term, 1927.

Gulf Refining Co.,

Appellant,

v.

Charles Warner Co.,

Appellee.

SUR PETITION FOR REHEARING.
(Filed August 23, 1927.)

AND NOW, to wit, on August 19, 1927, after due consideration, the petition for rehearing in the above-entitled case is hereby denied.
Philadelphia,

VICTOR B. WOOLLEY,
Circuit Judge.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA, } *Sct.*
THIRD JUDICIAL CIRCUIT.

I, SAUNDERS LEWIS, JR., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original transcript of record and proceedings in the cases of Independent Pier Co., appellant, v. Charles Warner Co., appellee (No. 3633); steamship "Gulftrade," whereof Gulf Refining Company is claimant, appellant, v. Charles Warner Company, appellee (No. 3634), on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court at Philadelphia, this second day of September in the year of our Lord one thousand nine hundred and twenty-seven, and of the Independence of the United States the one hundred and fifty-second.

(Seal)

SAUNDERS LEWIS, JR.,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1927

No. 623

ORDER ALLOWING CERTIORARI—Filed January 3, 1928

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1927

No. 624

ORDER ALLOWING CERTIORARI—Filed January 3, 1928

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

NOV 17 1927

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

No. ~~623. 624~~ 22-23 October Term, 1927.

CHARLES WARNER COMPANY,
Libellant and Appellee,
v.
INDEPENDENT PIER COMPANY,
Respondent and Appellant.

CHARLES WARNER COMPANY,
Libellant and Appellee,
v.
STEAMSHIP "GULFTRADE," Whereof GULF REFINING COMPANY is Claimant,
Appellant.

Petition for Writs of Certiorari.

ACKER, MANNING & BROWN,
Proctors for Petitioner.

J. T. MANNING, JR.,
EVERETT H. BROWN, JR.,
Of Counsel.

International, 236 Chestnut St., Philadelphia

IN THE

Supreme Court of the United States.

October Term, 1927. No.

In the Matter of the Petition of Charles Warner Company for a Writ of Certiorari Directed to the Circuit Court of Appeals of the United States for the Third Circuit to Bring Before the Supreme Court the Cases of:

CHARLES WARNER COMPANY,
Libellant and Appellee,

v.

INDEPENDENT PIER COMPANY,
Respondent and Appellant.

CHARLES WARNER COMPANY,
Libellant and Appellee,

v.

STEAMSHIP "GULFTRADE" WHEREOF GULF REFINING COMPANY IS CLAIMANT,
Appellant.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States.

The petition of Charles Warner Company for a writ of certiorari directed to the Circuit Court of Ap-

peals for the Third Circuit to bring before the Supreme Court the cases of Charles Warner Company v. Independent Pier Company and Charles Warner Company v. Steamship "Gulftrade" whereof Gulf Refining Company is claimant, respectfully shows to this Honorable Court as follows:

1. Your petitioner Charles Warner Company is a corporation of Delaware with its principal place of business in Philadelphia, Pennsylvania and was, at all times hereafter mentioned, the owner or charterer of certain lighters known as Nos. 18, 33 and 44, and the owner of the cargoes loaded thereon. The Independent Pier Company is a corporation of Pennsylvania with its principal place of business in Philadelphia, Pennsylvania and was, at all times hereafter mentioned, the owner of the Steamtug "Triton." The Steamship "Gulftrade" is an American steamship at all times hereafter mentioned owned by Gulf Refining Company, a corporation of Texas with an office and place of business in Philadelphia, Pennsylvania.

2. This litigation involves a collision occurring on October 1, 1923, in the Schuylkill River between the aforesaid lighters Nos. 18, 33 and 44 in tow of the Steamtug "Taurus" also owned by your petitioner and an overtaking vessel, the Steamship "Gulftrade," whose navigation at the time was in charge of the master of the Steamtug "Triton," an employe of the Independent Pier Company.

3. At the time of the collision the "Taurus" and its tows constituted the *overtaken* vessel and the Steamship "Gulftrade" with its attendant tugs the "Triton" and the "F. A. Churchman" the *overtaking* vessel, the evidence showing that the "Gulftrade" followed the "Taurus" and tows up the Delaware

River; and then, after an exchange of one blast whistle signals, in attempting to pass the tow, ran it down causing serious damage and loss of the life of one of the lightermen.

4. A libel to recover for the loss arising out of the collision was filed on behalf of your petitioner in the United States District Court for the Eastern District of Pennsylvania against the Steamship "Gulftrade" in rem, her owner the Gulf Refining Company, Inc., in personam the attendant Steamtugs "Triton" and "F. A. Churchman" in rem and their owners Independent Pier Company and Alfred C. Churchman in personam; and, after hearing upon pleadings and proofs the said Court held the Steamship "Gulftrade" and those in charge of her navigation wholly at fault, and an interlocutory decree was entered on February 23, 1927, in favor of your petitioner against Independent Pier Company primarily and against the Steamship "Gulftrade" and its stipulator for value secondarily.

5. Appeals were taken from the said decree by both Independent Pier Company and the claimant of the Steamship "Gulftrade" to the Circuit Court of Appeals for the Third Circuit and after hearing of the two appeals together on June 7, 1927, the said Court filed its opinion, holding both the tug "Taurus" and the Steamship "Gulftrade" at fault for the collision and directing that the decree of the Court below be modified accordingly. The Circuit Court of Appeals based the fault of the tug "Taurus" upon the following finding:

> "When the whistle of the 'Gulftrade' blew the 'Taurus' certainly was not in a position to let the 'Gulftrade' pass in safety, but she, nevertheless, agreed that the 'Gulftrade' come ahead. La-

ter on the 'Gulftrade' evidently became anxious and blew another blast, to which the 'Taurus' gave the same consent to go ahead, and while there is some question as to whether the 'Gulftrade' blew a third blast and got the same consent, we are inclined to think she did. Now it seems to us that under the circumstances, the 'Taurus' was in fault, in giving these three consents to the 'Gulftrade' to come ahead, relying too much on her ability to get out of the channel."

6. A petition for reargument was filed on behalf of your petitioner in said Circuit Court of Appeals which petition was dismissed by that Court on August 19, 1927.

7. Your petitioner avers that the Circuit Court of Appeals, in holding that the assent by the "Taurus" to the passing signal of the "Gulftrade" was at fault, placed a burden on the overtaken vessel, the "Taurus" to do more than maintain her course and speed as required by law and put an obligation upon her to keep out of the way and to share with the overtaking vessel, the "Gulftrade" the risk and responsibility of a safe passage.

8. Your petitioner is informed and believes and, therefore, respectfully avers that the learned Circuit Court of Appeals was in error in holding as aforesaid; and that the assenting signals given by the "Taurus" in answer to the signals of the "Gulftrade" constituted nothing more than an expression of an understanding of what the "Gulftrade" proposed to do and an agreement on the part of the "Taurus" not to thwart it; and to maintain her course and speed; and that, under the law, the "Gulftrade" still remained the sole judge as to the matter of safety of the passage at the point selected; and that upon it was

the risk of the maneuver and the burden to keep out of the way.

9. Your petitioner is informed and believes and, therefore respectfully avers that the holding of the said Circuit Court of Appeals is in conflict with the holding of the Circuit Court of Appeals for the Eighth Circuit in the case of Atlas Transport Company v. Lee Line Steamers, 235 Fed. 492, in which case a petition for rehearing was refused by the said Court 238 Fed. 349 and a petition for certiorari was refused by your Honorable Court. Lee Line Steamers v. Atlas Transport Company, 243 U. S. 643. In that case the steamer "Rees Lee" in attempting to pass the steam tug "Josh Cook" with four barges in tow collided with her; and, in holding the "Rees Lee" solely at fault, the Circuit Court said, 235 Fed. 495:

> "Under these rules, the Josh Cook had the right and the duty to hold her course. It was not its duty to keep away from the Rees Lee, unless a collision should become imminent. The Rees Lee had the right to pass the other boat, if it could do so with safety to both. It had to be its own judge as to the matter of safety as whatever risk attended its passage from the narrowness of channel, the shallowness of water, the current, suction, or other causes, except the fault of the Josh Cook, was assumed by the Rees Lee. *The reply of the Josh Cook to the passing signal of the Rees Lee was no more than an assent to it, at the risk of the vessel proposing it. It expressed an understanding of what the Rees Lee proposed to do, and an agreement not to thwart it, but the success of the maneuver was at the risk of the Rees Lee.*" (Italics ours.)

10. The question of law involved in this case is substantially as follows:

I. Does the assent of an overtaken vessel to the passing signal of an overtaking vessel place a burden on the former to keep out of the way of the latter; and to share with her the responsibility of a safe passage; as decided by the Circuit Court of Appeals in the present case, or

II. Does it constitute no more than an assent to the passing at the risk of the overtaking vessel, which is to be her own judge of the matter of safety in passing and assumes all risks except such as may be the fault of the overtaken vessel in failure to maintain her course and speed as decided by the Circuit Court of Appeals for the Eighth Circuit in Atlas Transport v. Lee Line Steamers (vide *supra*).

10. Your petitioner further avers that the present case is one in which it is proper for this Court to issue a writ of certiorari for the following reasons, among others:

I. Because the question of law herein has not been passed upon by this Court.

II. Because the public interest and the interest of jurisprudence require a decision of this Court upon the questions of law involved herein.

III. Because the decision of the Circuit Court of Appeals in this case is in conflict with the decision of the Circuit Court of Appeals for the Eighth Circuit in the case of Atlas Transport Company v. Lee Line Steamers above referred to.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari may issue directed to the

United States Circuit Court of Appeals for the Third Circuit commanding that Court to certify and to send to this Court a full and complete transcript of the record of all proceedings of said Court in the above-entitled causes, to the end that said cause may be reviewed and determined by this Court as provided by law.

And your petitioner will ever pray.

CHARLES WARNER COMPANY,

By its Attorneys,
ACKER, MANNING & BROWN.

J. T. MANNING, JR.,
Proctor for the Petitioner.
EVERETT H. BROWN, JR.,
Of Counsel.

STATE OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } *ss.:*

Reed C. Bye, being duly affirmed according to law, deposes and says that he is the vice-president of Charles Warner Company, the petitioner, and duly authorized to make this affidavit on its behalf, that he has read the foregoing petition; that the facts therein stated are true to the best of his knowledge, information and belief and that his knowledge is derived from the record in the case.

Affirmed and subscribed before me this
day of A. D.
1927.

REED C. BYE.

I hereby certify that I have examined the foregoing petition and in my opinion the petition is well founded, and the cause is one in which the prayer of the petitioner should be granted by this Honorable Court.

.....
Proctor for the Petitioner.

FILE COPY

FILED
NOV 17 1927
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

No. ~~623~~ 622, 623 · ~~624~~ October Term, 1927.

CHARLES WARNER COMPANY,
Libellant and Appellee,
v.
INDEPENDENT PIER COMPANY,
Respondent and Appellant.

CHARLES WARNER COMPANY,
Libellant and Appellee,
v.
STEAMSHIP "GULFTRADE," Whereof GULF REFINING COMPANY is Claimant,
Appellant.

Brief in Support of Petition for Writs of Certiorari

ACKER, MANNING & BROWN,
Proctors for Petitioner.

J. T. MANNING, JR.,
EVERETT H. BROWN, JR.,
Of Counsel.

International, 236 Chestnut St., Philadelphia

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ADDENDA.

The decision of the District Court for the Eastern District of Pennsylvania, per Dickinson, *J.*, has not been reported.

The decision of the Circuit Court of Appeals for the Third Circuit, rendered June 7, 1927, is reported under the name of *Independent Pier Co. v. Charles Warner Co., Gulf Refining Co. v. Charles Warner Co., The "Gulftrade,"* 20 Fed. 2d, 111, and under the name of the *"Gulftrade,"* 1927 A. M. C. 1148.

The final decision of the Circuit Court of Appeals for the Third Circuit, in this case rendered August 19, 1927, upon the petition for rehearing filed by the petitioner herein, has not been reported.

IN THE

Supreme Court of the United States.

October Term, 1927. No. .

In the matter of the petition of Charles Warner Company for a Writ of Certiorari directed to the Circuit Court of Appeals of the United States for the Third Circuit to bring before the Supreme Court the cases of:

CHARLES WARNER COMPANY,
Libellant and Appellee,

v.

INDEPENDENT PIER COMPANY,
Respondent and Appellant.

CHARLES WARNER COMPANY,
Libellant and Appellee,

v.

STEAMSHIP "GULFTRADE" WHEREOF GULF REFINING COMPANY is CLAIMANT,
Appellant.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

THE FACTS.

The facts in this case are as follows:

On October 1, 1923, the Steamtug "Taurus" having in tow the lighters Nos. 18, 33, 14 and 53, all of which vessels were owned or chartered by the peti-

tioner, was proceeding up the Delaware River bound for Bainbridge Street Wharves, Schuylkill River. The lighters were towed astern of the tug on a hawser, in two tiers, two abreast.

While the "Taurus" and tows were proceeding up the river the Steamship "Gulftrade" was picked up off Fort Mifflin by the steam tugs "Triton" and "F. A. Churchman." The master of the "Triton" assumed charge of the navigation of the flotilla and the "Gulftrade" under her own power followed the "Taurus" up the Delaware River.

The "Gulftrade" and her tugs proceeding at a greater rate of speed gradually overhauled the "Taurus" and her tows and several one blast passing signals were exchanged. The "Taurus" passed into and proceeded up the Schuylkill River and hauled to her port. About this time the "Gulftrade" which was coming into the Schuylkill River close astern of the tug and its tow was observed by those on the tug to be heading for the scows. The master of the "Taurus" at once blew danger signals but the "Gulftrade" continued on her course and in a moment it ran down the tow, capsizing one lighter and doing other damage. The lighterman on the capsized scow was drowned.

A libel was filed on behalf of the petitioner in the District Court for the Eastern District of Pennsylvania and upon pleadings and proof the court found the "Gulftrade" and those in charge of her navigation wholly at fault. An interlocutory decree was entered in favor of the petitioner against the respondents, Independent Pier Company and the Steamship "Gulftrade."

From this decree appeals were taken to the Circuit Court of Appeals for the Third Circuit on behalf of both respondents. That court held the "Taurus" and the "Gulftrade" both at fault and directed that the decree below be modified accordingly. A petition

for rehearing filed by your petitioner was refused by an order filed August 19, 1927.

Following this order the present petition was filed praying for a writ of certiorari.

THE QUESTIONS OF LAW.

I. Does the assent of an overtaken vessel to the passing signal of an overtaking vessel place a burden on the former to keep out of the way of the latter; and to share with her the responsibility of a safe passage; or

II. Does it constitute no more than an assent to the passing at the risk of the overtaking vessel, which is to be her own judge of the matter of safety in passing and assumes all risks except such as may be the fault of the overtaken vessel in failure to maintain her course and speed.

THE ARGUMENT.

In considering the decision of the Circuit Court of Appeals, and the questions of law raised in the petition for writ of certiorari, a brief examination of the facts in somewhat more detail than given above is necessary in order to appreciate the ruling being questioned.

The "TAURUS" was a small river tug about sixty-five feet in length. She was towing four lighters with heavy cargoes. The lighters were at the end of a hawser about one hundred feet long, but they themselves were bunched in two tiers, only a few feet separating the forward tier from the after tier. The length of

the tow itself from the bow of the forward lighters to the stern of the after lighters was two hundred and twenty-five to two hundred and fifty feet. The lighters were square-ended, and had no rudders, and their combined breadth from the starboard side of a lighter on the starboard side of the tow to the port side of a lighter on the port side of the tow was approximately fifty-six feet. They drew eight to ten feet of water, and as has been indicated, were heavily laden.

The tow thus made up proceeded up the Delaware River and rounded into the mouth of the Schuylkill River. The "GULFTRADE" with the tugs "TRITON" and "CHURCHMAN" alongside followed the tow. The tow was moving and could only move and maneuver very slowly. The steamship "GULFTRADE" was proceeding slowly, some of the witnesses say about three miles an hour, yet she overtook the "TAURUS" and its tow in a comparatively short time. As the Master of one of the tugs, who was in charge of the navigation of the "GULFTRADE," testified the "TAURUS" "was going a little bit faster than the tide" (Rec., p. 386). This was the maximum speed and power of which the "TAURUS" was capable under the circumstances, for the testimony is uncontradicted that the "TAURUS" was proceeding up the Delaware and into the Schuylkill at all times under full speed. That the tow was cumbersome, slow moving, difficult to handle and impossible to maneuver quickly should at all times be borne in mind in a consideration of the case.

On the other hand the "GULFTRADE," while laden, could be maneuvered more quickly, and could be handled with greater effectiveness than could the tow. The "GULFTRADE" was proceeding under her own power at slow speed. She had steerage way. Moreover, she had lashed alongside two powerful tugs for the very purpose of handling her whenever circum-

stances made it necessary. In comparison with the "TAURUS" and her tow, she could thus easily change her course, check her headway, or stop, and the presence of the tugs alongside practically insured her against becoming unmanageable and grounding, or meeting with other disaster during the course of such a maneuver.

As the "GULFTRADE" began to overhaul the "TAURUS" passing signals of one blast of the whistle were exchanged between it and the tug, there being a conflict in the testimony as to the exact number, some witnesses saying three separate passing signals were exchanged, and others two. After the "TAURUS" entered the Schuylkill River, her helm was put to starboard and she bore off to port in order to give the "GULFTRADE" ample room to pass, but meanwhile, the flood tide, flowing up the Delaware and into the Schuylkill, acting upon the lighters, swung them out toward mid-channel. The master of the tug thereupon threw his helm to port for a moment to straighten out his tow, but meanwhile the "GULFTRADE," proceeding on her course and entering the Schuylkill River under a starboard helm, swung toward the lighters and ran down the flotilla.

There were no factors of wind or weather contributing to the collision or hampering the vessels involved. The collision occurred about three o'clock P. M. on the first day of October. The weather was fair, the wind negligible and the ordinary flood tide running. The vessels were in sight of each other for a considerable period of time and each knew what the other intended to do. Yet, under these circumstances, the overtaking vessel ran down a cumbersome tow, causing loss of property and loss of life.

The sole defense raised on the pleadings and at the trial and upon the argument before the Circuit Court of Appeals on the part of the "GULFTRADE" is

that immediately preceding the collision the "TAURUS," heavily burdened as she was, failed to maintain her course and speed, but sheered to the starboard so that the lighters in her tow, in the course of a few moments when the flotillas were but a short distance apart, were carried to starboard and across the course of the "GULFTRADE."

Both the District Court and the Circuit Court of Appeals found against the "GULFTRADE" on this issue, the explanation of the collision being found in the opinion of the Circuit Court of Appeals in the following language:

> "When her bow (referring to the 'GULFTRADE') at the slow rate of speed she was going was turned into the dead water of the Schuylkill, her stern was naturally swinging further and further up the Delaware so that she had to round up also from her position, and meanwhile her stern being carried up the Delaware, her bow naturally tended over to the western bank of the Schuylkill and headed in that direction while she was being straightened out."

While this was the natural movement on the part of the "GULFTRADE," it was something which the "TAURUS" was not bound to anticipate as causing a condition dangerous to a passage. It was wholly in the control of the "GULFTRADE." It will be remembered that she had two powerful tugs accompanying her, lashed to her port side, one at the bow and one at the stern, and those tugs could have been maneuvered, as indeed they were immediately prior to the collision, to hold her bow off to starboard and her stern to port as she entered the Schuylkill, and to prevent her swinging so that she would collide with the scows in tow of the "TAURUS." It was clearly no part of the duty of

the "TAURUS" to anticipate that the "GULFTRADE" with two tugs alongside of her would not control her movements and thus convert a situation safe for passage, into an unsafe one by her own maneuvers. That was wholly the duty of the "GULFTRADE." The risk of the maneuver was upon her, and it was the duty of the "TAURUS" only to maintain her course and speed, or to give way to port, which she in fact did, and which it has been found that she did by both Courts having this matter under consideration.

In the face of the above finding, however, and of the issues raised, the Circuit Court of Appeals found that the "TAURUS" was partly at fault for the collision in assenting to the passing signals of the "GULFTRADE." The following language from the decision of the Circuit Court of Appeals gives the ground for its decision: 76 C.C.A. 581

> "When the whistle of the 'GULFTRADE' blew, the 'TAURUS' certainly was not in a position to let the 'GULFTRADE' pass in safety, but she, nevertheless, agreed that the 'GULFTRADE' come ahead. Later on the 'GULFTRADE' evidently became anxious and blew another blast, to which the 'TAURUS' gave the same consent to go ahead, and while there is some question as to whether the 'GULFTRADE' blew a third blast and got the same consent, we are inclined to think she did. Now it seems to us that under the circumstances, the 'TAURUS' was in fault in giving these three consents to the 'GULFTRADE' to come ahead, relying too much on her ability to get out of the channel."

It should here be noted that in the answer to the libel there is no allegation of fault on the part of the "TAURUS" in assenting to the passage. There is no allegation that the vessels were not in position to pass each other in safety, and there is no allegation that at the point of the collision there was not room for them to pass each other in safety.

That the finding of the Circuit Court of Appeals in view of the facts before the Court is in error and is in conflict with the decisions in other circuits appears from an examination of the authorities grouped under the several points following:

Point I. It was the duty of the "GULFTRADE," the overtaking vessel to keep out of the way of the "TAURUS" and its tow, the overtaken vessels, and the assent by the "TAURUS" to the passing signal of the "GULFTRADE" constituted no more than an acknowledgment of the purpose of the "GULFTRADE" and an assent to the passage at the risk of the overtaking vessel.

The situation before the Court of one vessel overtaking and attempting to pass another is governed by the provisions of the rules of navigation contained in the *Inland Rules* and *the Pilot Rules for Inland Waters.*

The Inland Rules provide:

"*Rule VIII.* When steam-vessels are running in the same direction, and the vessel which is astern shall desire to pass on the right or starboard hand of the vessel ahead, she shall give one short blast of the steam-whistle, as a signal of such desire, and if the vessel ahead answers with one blast, she shall put her helm to port; or if she shall desire to pass on the left or port side of the vessel ahead, she shall give two short blasts of the steam-whistle as a signal of such desire, and if the vessel ahead answers with two blasts, shall put her helm to starboard; or if the vessel ahead does not think it safe for the vessel astern to attempt to pass at that point, she shall immediately signify the same by giving several short and rapid blasts of the steam-whistle, not less than four, and under no circumstances shall the vessel astern at-

tempt to pass the vessel ahead until such time as they have reached a point where it can be safely done, when said vessel ahead shall signify her willingness by blowing the proper signals. The vessel ahead shall in no case attempt to cross the bow or crowd upon the course of the passing

"*Rule IX. Art. 23.* Every steam-vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse.

Art. 24. Notwithstanding anything contained in these rules, every vessel overtaking any other, shall keep out of the way of the overtaken vessel."

The provisions of the *Pilot Rules* (Rule VI) are substantially the same.

The above rules, and the relative duties of vessels under the circumstances, have been the subject of many decisions, and the law with reference thereto can be summarized briefly, as follows:

It is the duty of an overtaking vessel to keep out of the way of and not crowd the overtaken vessel, and the burden is upon the overtaking vessel to show not only prudence on her part, but negligence on the part of the overtaken vessel. With respect to the exchange of whistle signals, assent by an overtaken vessel to the passing signal of an overtaking vessel is no more than an assent to the passing at the risk of the vessel proposing it, and merely expresses an understanding by the overtaken vessel of what the overtaking vessel desires to do.

In *Spencer Marine Collisions,* Sec. 69, pp. 172-173, the law is stated as follows:

"Where two vessels are running in the same direction, one astern of the other, the law imposes upon the one following the obligation of exercising

a greater degree of care to avoid collision than is imposed upon the other; the statute requiring every vessel, whether steamship or sailing vessel, when overtaking another, to keep out of the way of the one overtaken.

"The duty of an overtaking vessel to keep out of the way is especially imperative when it is a steamer, as it has control over its motive power, and can promptly and accurately govern her own movements. The duty of avoiding the leading ship being imposed by law upon the one following, in case of collision the burden of proof is cast upon the latter to show the prudence of her own conduct, the negligence of the one leading, and that the collision was not caused by fault on her own part. * * *

"Under the rules no subsequent alteration of the position of the vessels can make the one following other than an overtaking vessel, or relieve her from the duty of keeping clear of the leading ship until fully past and clear; and it is her duty to take such reasonable precautions as may be necessary to avoid the other, the burden of proof being upon her to show that such precautions were timely and sufficient. While the leading vessel has the right of way, she may not wilfully cross the path of the other without forfeiting all right of recovery for collision ensuing therefrom, even though the overtaking vessel be not wholly without fault."

In other words the only duty on the "TAURUS" after the exchange of passing signals was to maintain her course and speed and she was not at fault in assenting to the passage by the "GULFTRADE" unless it was unsafe for the "GULFTRADE" to attempt to pass at that point *because of some danger apparent to her and not to the* "GULFTRADE," *such as a necessary change in her course or some condition known to herself and not to the overtaking vessel.*

Of this there is no intimation in the record. It has long been settled, that the overtaking vessel assumes

the risk of determining when and where a safe passage can be made after due consideration of all the factors entering into the situation. As was said by Judge Betts in the *Steamer "Rhode Island,"* Olcott 505: Fed. Cas. 11,745:

> "The approaching vessel when she has command of her movement, takes upon herself the peril of determining whether a safe passage remains for her beside the one preceding her and must bear the consequences of misjudgment in that respect."

This decision of Judge Betts' in the "Rhode Island" was referred to with approval by the Supreme Court of the United States in *Whitridge, et al. v. Dill, et al.*, 23 How. 448.

The duty of an overtaking vessel has been stated and restated many times, and it has always been recognized and held by the Courts, that the duty is upon her to keep out of the way of the overtaken vessel. As was said by Circuit Judge Waddell in the *"City of Baltimore,"* 282 Fed. 490, C. C. A. 4th Cir. (1922), at page 492:

> "She was an overtaking vessel, charged specifically with the duty of securing the assent of the other vessel before attempting to pass, and at the same time with the duty of keeping clear and out of the way of the overtaken vessel. Rules of Navigation, article 18, rule 8 (Comp. St. Sec. 7892); also articles 21, 22, 23 and 24 (Sections 7895-7898), The Aureole, 113 Fed. 224, 51 C. C. A. 181; The Sif (D. C.), 181 Fed. 412; Atlas Transportation Co. v. Lee Line Steamers, 235 Fed. 492, 149 C. C. A. 38; The Samarinda, 244 Fed. 744, 157 C. C. A. 192; The Hampden (C. C. A.), 276 Fed. 399."

In view of the facts before it, the Circuit Court of Appeals in its decision has enlarged the obligations

of an overtaken vessel as stated in the rules and in the above decisions, and has increased that burden to an extent not justified by any decisions known to the petitioner. In effect it placed upon the "TAURUS" the burden of observing the navigation of the "GULFTRADE," of anticipating her movements in swinging into the Schuylkill and her failure to be able to straighten out on her course in time to avoid collision with the tow. It also follows that the decision placed upon the "TAURUS" an obligation to know the draft of the "GULFTRADE," her breadth of beam, and to conclude from this that because of her position in the channel and the depth of the deep water channel that it was unsafe for the "GULFTRADE" to round the "TAURUS" and her tows at that particular point, and therefore placed an obligation upon her to dissent from the passing signal blown by the "GULFTRADE."

In imposing this duty and obligation upon the "TAURUS" it is respectfully submitted that the finding of the Court places upon the overtaken vessel a responsibility which under the rules is not hers, and which is not only in conflict with the principles above stated, but in direct conflict with an analogous decision in the Eighth Circuit.

Point II—The decision of the Circuit Court of Appeals is in conflict with the decision of the Circuit Court of Appeals for the Eighth Circuit in the case of *Atlas Transport Company v. Lee Line Steamers,* 235 Fed. 492 C. C. A. 8th Cir. (1916).

The situation presented in the present case is most nearly paralleled in *Atlas Transportation Co. v. Lee Line Steamers,* 235 Fed. 492 C. C. A. 8th Cir. (1916). In that case the steamship "Rees Lee" attempted to pass the steam tug "Josh Cook" with four

barges in tow, and collided with the barges. The passing signals had been exchanged between the "Rees Lee" and the "Josh Cook," and as to the effect of these signals and the effect of the assent of the "Josh Cook" to the passing signal of the "Rees Lee," the Court said, page 495:

> "The Rees Lee had the right to pass the other boat if it could do so with safety to both. It had to be its own judge as to the matter of safety, as whatever risk attended its passage from the narrowness of channel, the shallowness of water, the current, suction, or other causes, except the fault of the Josh Cook, was assumed by the Rees Lee. *The reply of the Josh Cook to the passing signal of the Rees Lee was no more than an assent to it, at the risk of the vessel proposing it. It expressed an understanding of what the Rees Lee proposed, to do, and an agreement not to thwart it; but the success of the maneuver was at the risk of the Rees Lee.*" (Italics ours.)

The owners of the "Rees Lee," the overtaking vessel in that case, filed a petition for rehearing *on the ground that the "Josh Cook" was negligent in whistling its assent for the "Rees Lee" to pass at a dangerous place. Atlas Transport Co. v. Lee Line Steamers,* 238 Fed. 349 (1916). This petition was denied. The Court said:

> "The Josh Cook by its signal of two whistles (the passing signals) did not assent that the Rees Lee could pass recklessly, but only that it could pass safely, if properly navigated. It assented that it could pass at a proper distance and a proper speed. . . . The testimony is convincing that the place was safe for passing, if the Rees Lee had passed slowly."

Proctor for the overtaking vessel filed a petition for writ of certiorari to the Supreme Court, which peti-

tion was refused, *Atlas Transport Co. v. Lee Line Steamers,* 243 U. S. 643.

The effect of this decision, which has been cited with approval a number of times since it was rendered, and which has not been criticised, when applied to the present case, clearly defines the duties and obligations of the "TAURUS" and the effect of its assent to the passing signal of the "GULFTRADE." The assent amounted to this:

That the "TAURUS" knew the "GULFTRADE" would attempt to pass; that the "TAURUS" undertook to maintain its course and speed; and that so far as it could see there was no danger in the passage because of the place chosen therefor.

The "TAURUS" in consequence of its signal, maintained its course and speed and fulfilled all the duties imposed upon it by law, and under the circumstances, it was clearly not at fault for assenting to the passage.

On the other hand, the burden was upon the "GULFTRADE" to pass with care, at a proper place and at a proper distance from the tow. It was the duty of the "GULFTRADE" to determine whether she could pass the "TAURUS" at the particular point chosen. The situation was obvious to those in command of the "GULFTRADE." They knew what she was drawing, what draft she would need, what depth of water was available and the width of the channel. They could see directly ahead of them the "TAURUS," and they could also see that she was going off to port as fast as was possible. There was no danger obvious to the "TAURUS" except that the "GULFTRADE" might run her down, and this she was not bound to foresee. She was only bound to warn the "GULFTRADE" as to dangers not obvious to that vessel. As was said by Circuit Judge Woods *in the Dorset,* 260 Fed. 32, C. C. A. 4th Cir. (1919), in commenting upon the *Atlas Transport Co. v. Lee Line Steamers,* at page 34:

"Atlas Trans. Co. v. Lee Line Steamers, 235 Fed. 492, 149 C. C. A. 38, is relied on as holding the signal of the Crisfield and the assent of the Dorset imposed no obligation on the Dorset but that was an overtaking case where ordinarily *there is no duty on the overtaken vessel except to keep her course unless she perceived danger not obvious to the overtaking vessel.*"

Further comment upon the authorities is unnecessary. The law is clear as to the duties and responsibility of overtaking and overtaken vessels respectively, and it is well established that the burden of passage is not shared equally between the two. The overtaking vessel must keep out of the way. She must pick the place of passage. She must pass at a proper distance. She must observe care in the matter of speed, and an overtaken vessel has no duty or obligation whatsoever, except to maintain her course and speed, or unless she knows of some danger not obvious to the overtaking vessel.

In the present case as far as the "TAURUS" was concerned, it was perfectly safe for the "GULFTRADE" to pass. It was found by both Courts that the "TAURUS" maintained her course and speed, and furthermore gave way to port to give the "GULFTRADE" all the passageway possible. She was not required to do this by the rules, but on the other hand, the rules contemplate that the overtaking vessel shall steer to port or to starboard after receiving an assent to a passing signal in order to keep out of the way of the overtaken vessel. There is no indication in the record that such a change of course was made by the "GULFTRADE," but insofar as the "TAURUS" was concerned there was no reason why the "GULFTRADE" should not pass at such place as was safe having regard to the draft of the "GULFTRADE," the width of the deep water channel and all other factors known to her own navigators

and to be considered in passing at a given point. The "TAURUS" therefore assented to the passage, and it was then the obligation of the "GULFTRADE" if she had room to pass at that point to port her helm to round the "TAURUS." If there was not room enough at that particular point to effect the passage with safety, the obligation was upon the "GULFTRADE" to wait until there was such room or such depth of water. This she failed to do, but there was no obligation upon the "TAURUS" to anticipate such failure.

The decision of the Circuit Court of Appeals, however, imposes that duty upon the overtaken vessel and places upon it too great a burden, going far in the direction of making both the overtaking and overtaken vessel assume an equal share of the responsibility for a safe passage. In so holding, the decision seems at variance with the well-established rules on the subject and for that reason, and so that the law may be made uniform and that justice be done the petitioner, it is submitted that a writ of certiorari should issue in order that the record in the case be brought before this Court for review, and final determination.

Respectfully submitted,

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Nos. 623 & 624. 22 23 October Term, 1927.

IN THE

Supreme Court of the United States

CHARLES WARNER COMPANY,
Petitioner,

v.

INDEPENDENT PIER COMPANY,
Respondent.

CHARLES WARNER COMPANY,
Petitioner,

v.

Steamship "GULFTRADE," Whereof GULF REFINING COMPANY is Claimant,
Respondent.

On Writs of Certiorari to the Circuit Court of Appeals for the Third Circuit.

Brief on Behalf of Petitioner.

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IN THE

Supreme Court of the United States.

Nos. 623 and 624. October Term, 1927.

CHARLES WARNER COMPANY,
Petitioner,

v.

INDEPENDENT PIER COMPANY,
Respondent.

CHARLES WARNER COMPANY,
Petitioner,

v.

STEAMSHIP "GULFTRADE" WHEREOF GULF REFINING COMPANY IS CLAIMANT,
Respondent.

ON WRITS OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF ON BEHALF OF PETITIONER.

I. OFFICIAL REPORTS OF THE OPINIONS BELOW.

The opinion of the District Court (R., 546) has not been reported.

The opinion of the Circuit Court of Appeals (R., 546) has not been reported.

The opinion of the Circuit Court of Appeals (R., 578) is reported in 20 F. 2d 111.

II. STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOLVED.

(1) The decrees to be reviewed are those of the Circuit Court of Appeals dated June 7, 1927 (R., 583, 584).

(2) The petition for writs of certiorari (R., 595) was filed November 17, 1927, and the writs were granted January 3, 1928, which is reported in 275 U. S. 521.

(3) The jurisdiction of this Court is based upon the Circuit Court of Appeals Act March 3, 1891, c. 517, Sec. 6; 26 Stat. 828; as amended March 3, 1911, c. 231, Sec. 240, 36 Stat. 1157, and February 13, 1925, c. 229, Sec. 1, 43 Stat. 938.

III. STATEMENT OF THE CASES.

These cases are before the Court on writs of certiorari to the United States Circuit Court of Appeals for the Third Circuit. The petition was granted by this Court at the October Term, 1927. The Circuit Court of Appeals modified the decree of the District Court for the Eastern District of Pennsylvania (R., 584), which had sustained the libel of the petitioner against Independent Pier Company, owner of the tug "TRITON" and Steamship "GULFTRADE" for damages sustained by the petitioner arising out of a collision between the "GULFTRADE" and a tow of sand scows, owned by the petitioner and in tow of the petitioner's Steamtug "TAURUS" (R., 552). At the time of the collision, the "GULFTRADE" was in charge of two tugs, the "TRITON" and the "CHURCHMAN," and was in command of the master of one of them, the "TRITON."

The libel of the petitioner was *in rem* against the steamship and the two tugs and *in personam* against the owners of the tugs (R., 4). The libel was in the usual form setting forth the facts of the collision, which was one between overtaken and overtaking vessels, the "GULFTRADE" being the overtaking vessel. The fault alleged against the "GULFTRADE" was, that after an agreement had been reached by an exchange of signals, for the "GULFTRADE" to pass on the tow's starboard side, the "GULFTRADE" failed to keep out of the way and ran down the tow.

Process issued, stipulations were filed by the claimants of the vessels involved and issue duly joined by answers filed on behalf of all the respondents (R., 14; R., 23). The sole defense to the allegations of fault was that after the exchange of passing signals, the "TAURUS" and its tow failed to maintain its course and sheered across the course of the "GULFTRADE."

The testimony of the master and several of the officers of the "GULFTRADE" was taken by deposition. The testimony of the officers and crew of the tug "TAURUS," and the men on the scows, was also taken by deposition. On October 8, 1926, the cause came on for trial in the United States District Court for the Eastern District of Pennsylvania and the testimony of the master and officers of the tugs "TRITON" and "CHURCHMAN" was taken in open court.

The District Court filed its written opinion (R., 546) January 12, 1927, sustaining the libel as to the "GULFTRADE" and Independent Pier Company, owner of the tug "TRITON," whose master was in charge of the navigation of the "GULFTRADE," and dismissing the libel as against the steamtug "CHURCHMAN" and the respondent, Alfred C. Churchman, owner of the tug "CHURCHMAN," and ordered a decree to be entered in favor of the petitioner.

In conformity with this opinion, a decree was entered on February 23, 1927 (R., 552). A petition for appeal was filed March 3, 1927, on behalf of Independent Pier Company (R., 554), and on March 10, 1927, on behalf of Gulf Refining Company (R., 560), claimant and owner of the steamship "GULFTRADE." The two appeals were argued together before the Circuit Court of Appeals for the Third Circuit on the eleventh day of May, 1927; one record was printed and the appeals were argued as one and briefed as one and will be so argued and briefed before this Court. On June 7, 1927, the Circuit Court of Appeals handed down its opinion, finding that the tug "TAURUS" was partly at fault for the collision and directing that the damages sustained be divided between the petitioner and the respondents, and the decree of the District Court modified accordingly (R., 578).

A petition for rehearing was filed by petitioner on the sixth day of July, 1927 (R., 585) and denied on August 19th, 1927, by order filed August 23, 1927 (R., 591).

A petition for writ of certiorari was filed in this Court on the seventeenth day of November, 1927 (R., 595), which writ was granted the third day of January, 1928.

The District Court found (R., 546) that the collision, between the "GULFTRADE" and the scows in tow of the "TAURUS," occurred a short distance inside the mouth of the Schuylkill River, after passing signals had been exchanged between the two vessels; that as the "TAURUS" and its tow entered the Schuylkill River from the Delaware, the set of the tide of the latter swung the scows toward mid-channel; that there was room enough and water enough at the time and place for the "GULFTRADE" to have passed the tow in safety on the starboard side of the tow in accordance with the whistle signals exchanged; that the "TAURUS" and its

tow maintained its course and did not sheer on to the course of the "GULFTRADE"; that it was the duty of the tug to keep well to the westward (that is over to port) after the exchange of whistles agreeing to a passage on her starboard, and that, as a fact, the tug did keep well over to port; that the "GULFTRADE" was bound to anticipate that the tow would swing somewhat toward mid-channel as it entered the Schuylkill and that in failing so to do and to make sufficient allowance, in its own course, for this movement, miscalculated and was at fault for the resulting collision.

The Circuit Court of Appeals found the facts of the collision in accordance with the findings of the District Court (R., 578), with one exception, to wit: that the "TAURUS" was not in a position to let the "GULFTRADE" pass when the whistle signals were exchanged and was therefore at fault in assenting to the passage, under the circumstances. It re-affirmed the finding of the District Court that the tug "TAURUS" did not sheer on to the course of the "GULFTRADE" but on the contrary that the set of the tide swung the stern of the "GULFTRADE" to starboard and her bow to port and into the scows. It therefore ordered the decree of the District Court modified and the damages divided between the parties (R., 584).

IV. STATEMENT OF THE FACTS.

The petitioner, at the time of the occurrence of the events out of which this litigation arises, was the owner of a steamtug, the "TAURUS," and the owner or charterer of certain sand scows, known as Nos. 18, 33, 44 and 53.

The "TAURUS" was a small river and harbor tug about sixty-five feet in length. The scows were built

of wood, two of them about one hundred and twenty (120) feet in length, one about one hundred and twenty-six (126) feet in length and the other about the same length, its dimensions not appearing of record. The scows were twenty-six (26) to twenty-eight (28) feet in breadth, were square ended and had no rudders.

On October 1, 1923, the "TAURUS" made up a tow of the four scows referred to, in the Delaware River in the vicinity of Mantua, New Jersey (R., 33), some distance south of the confluence of the Delaware and Schuylkill Rivers. The scows were heavily laden with cargoes of pebbles and said.

The tow was made up two scows abreast. The scows were lashed together with the ordinary and usual lines and were towed on hawsers about one hundred (100) feet in length, running from the stern towing bits of the tug to the port and starboard bows respectively of the port and starboard scows in the first tier (R., 33). It will thus be seen that the tow itself from the bow of the forward scows to the stern of the after scows was about two hundred twenty-five (225) to two hundred fifty (250) feet in length and of a combined breadth of approximately fifty-six (56) feet. The scows drew eight to ten feet of water, and, as has been stated, were heavily laden.

With the tow thus made up, the tug proceeded up the Delaware River bound for wharves on the Schuylkill River where the scows and cargoes were to be delivered (R., 34).

While the "TAURUS" with its tow was proceeding up the Delaware River, the "GULFTRADE," inward bound to the plant of the Gulf Refining Company on the Schuylkill River, was picked up by two tugs, the "TRITON" and the "CHURCHMAN," off Fort Mifflin in the Delaware River (R., 370). The tug "TRITON" and the tug "CHURCHMAN" are harbor tugs.

The "CHURCHMAN" was made fast alongside the "GULFTRADE" on her port bow, just aft the bluff of the bow, and the "TRITON" on her port quarter, the stern of the "TRITON" being slightly forward of the stern of the "GULFTRADE" (R., 370). The masters of both tugs boarded the "GULFTRADE," proceeded to her bridge and took charge of the navigation of the three vessels, the master of the "TRITON" assuming command and the master of the "CHURCHMAN" assisting him on the bridge by transmitting his orders to the tugs alongside (R., 371).

The "TAURUS" and its tow, proceeding up the Delaware River, passed Fort Mifflin before the "GULFTRADE" and her tugs were ready to proceed and when the "GULFTRADE" got under way, the "TAURUS" was a considerable distance ahead of her. The "GULFTRADE," after getting under way, although proceeding slowly, began to overhaul the "TAURUS." The "TAURUS" was moving, and could only move, very slowly with her heavy scows. As the master of one of the tugs testified, the "TAURUS" was going "a little bit faster than the tide" (R., 386). This was the maximum speed and power of which the "TAURUS" was capable under the circumstances, for at all times prior to the collision, she was under full speed.

When the "TAURUS" reached the vicinity of the mouth of the Schuylkill River and the "GULFTRADE" was perhaps half a mile behind her, passing signals of one blast of the whistle were exchanged (R., 372).

Both vessels proceeded and the "TAURUS" and its tow passed into the Schuylkill River, keeping well to the westward of mid-channel. The effect of the flood tide in the Delaware River, however, had a tendency to swing the tow out toward mid-channel during this maneuver. By this time, the "GULFTRADE" was close astern of the tow, perhaps a length or two lengths distant (R., 390), but with plenty of room and plenty of

water to effect a passage to the starboard of the tow. About this time, passing signals were again exchanged and some of the witnesses say that there were three exchanges of signals. The "GULFTRADE," however, in violation of the agreement established, did not keep out of the way of the tow and pass to her starboard but, on the contrary, as she rounded in to the Schuylkill River, the flood tide in the Delaware had the same effect upon her as upon the scows and threw her stern to starboard and her bow to port toward the tow. Those on the "TAURUS" observed the danger and blew the danger signal, four blasts of the whistle (R., 68). The "GULFTRADE," however, continued on, the "CHURCHMAN" at her port bow cast off in time to avoid collision but the port bow of the steamer collided with the starboard scow in the last tier. The lines holding the scows together parted, and the bow of the "GULFTRADE" proceeded on into the stern of the starboard scow in the first tier seriously damaging it so that it filled and capsized (R., 39). Its master and its cargo were lost. The collision occurred about 3.00 o'clock P. M. The weather was fair, there was little wind and the tide was flood.

V. QUESTIONS OF LAW.

The questions of law presented by the petitioner under the above facts and raised in this certiorari are as follows:

1. Does the assent of an overtaken vessel to the passing signal of an overtaking vessel place a burden on the former to keep out of the way of the latter; and to share with her the responsibility of a safe passage; or

2. Does it constitute no more than an assent to the passing at the risk of the overtaking vessel, which is to

be her own judge of the matter of safety in passing and assumes all risks, except such as may be the fault of the overtaken vessel in failure to maintain her course and speed.

VI. SPECIFICATION OF THE ERRORS RELIED UPON.

Petitioner relies upon and assigns the following errors:

1. The Circuit Court of Appeals erred in holding the "TAURUS" at fault.

2. The Circuit Court of Appeals erred in holding that the assent by the "TAURUS" to the passing signal of the "GULFTRADE" under the circumstances, constituted a fault on the part of the "TAURUS."

3. The Circuit Court of Appeals erred in modifying the decree of the District Court holding the "GULFTRADE" solely at fault.

VII. SUMMARY OF ARGUMENT.

The argument of the petitioner may be briefly summarized as follows:

The "TAURUS" and its tow, constituting an overtaken vessel under the rules, assented to the passing signal of the "GULFTRADE," the overtaking vessel. There was plenty of room for the passage to be made but in attempting to do so, the stern of the "GULFTRADE" under the influence of the flood tide, swung to starboard and her bow to port and thus brought the "GULFTRADE" in collision with the lighters. Under the circumstances, the Circuit Court of Appeals held that the assent of the "TAURUS" to the passing signal of

the "GULFTRADE" constituted a fault on the part of the former vessel. This finding is erroneous and clearly out of line with the provisions of the rules of navigation, which require an overtaken vessel, in such circumstances, *only* to maintain her course and speed and place the responsibility for the safe passage upon the overtaking vessel, and is in conflict with the interpretation of those rules by this Court, in *Southern Pacific Company v. Haglund, Admrx et al.* (The "THOROUGHFARE") 48 Supreme Court 510; 72 L. E. 585; 1928 A. M. C. 965; approving the decision in *Atlas Transportation Company v. Lee Line Steamers,* 235 Fed. 492, 5.

VIII. ARGUMENT.

Point 1. It was the duty of the "Gulftrade," the overtaking vessel, to keep out of the way of the "Taurus" and its tow, the overtaken vessel, and the assent by the "Taurus" to the passing signal of the "Gulftrade" constituted no more than an acknowledgment of the purpose of the "Gulftrade," an assent to the passage at her risk, and an agreement on the part of the "Taurus" not to endanger the passage by permitting an interfering change in her position or in the position of her tow.

Before discussing the finding of the Circuit Court of Appeals and the respect in which it is erroneous, brief reference to the Rules of Navigation pertinent and to the decisions interpreting them, should be made.

The situation is that of one vessel overtaking and attempting to pass another and the conduct of the several vessels, in such circumstances, is governed by the following rules.

The Inland Rules provide:

"Rule VIII. When steam-vessels are running in the same direction, and the vessel which is astern shall desire to pass on the right or starboard hand of the vessel ahead, she shall give one short blast of the steam-whistle, as a signal of such desire, and if the vessel ahead answers with one blast, she shall put her helm to port; or if she shall desire to pass on the left or port side of the vessel ahead, she shall give two short blasts of the steam-whistle as a signal of such desire, and if the vessel ahead answers with two blasts, shall put her helm to starboard; or if the vessel ahead does not think it safe for the vessel astern to attempt to pass at that point, she shall immediately signify the same by giving several short and rapid blasts of the steam-whistle, not less than four, and under no circumstances shall the vessel astern attempt to pass the vessel ahead until such time as they have reached a point where it can be safely done, when said vessel ahead shall signify her willingness by blowing the proper signals. The vessel ahead shall in no case attempt to cross the bow or crowd upon the course of the passing.

"Rule IX. Art 23. Every steam-vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse.

"Art. 24. Notwithstanding anything contained in these rules, every vessel overtaking any other shall keep out of the way of the overtaken vessel."

The provisions of the *Pilot Rules* (Rule VI) are substantially the same.

The above rules, and the relative duties of vessels under the circumstances, have been the subject of many decisions, and the law with reference thereto can be summarized briefly, as follows:

It is the duty of an overtaking vessel to keep out of the way of and not crowd the overtaken vessel, and

the burden is upon the overtaking vessel to show not only prudence on her part, but negligence on the part of the overtaken vessel. With respect to the exchange of whistle signals, assent by an overtaken vessel to the passing signal of an overtaking vessel is no more than an assent to the passing at the risk of the vessel proposing it, and merely expresses an understanding by the overtaken vessel of what the overtaking vessel desires to do.

In *Spencer Marine Collisions,* Sec. 69, pp. 172-173, the law is stated as follows:

> "Where two vessels are running in the same direction, one astern of the other, the law imposes upon the one following the obligation of exercising a greater degree of care to avoid collision than is imposed upon the other; the statute requiring every vessel, whether steamship or sailing vessel, when overtaking another to keep out of the way of the one overtaken.
>
> "The duty of an overtaking vessel to keep out of the way is especially imperative when it is a steamer, as it has control over its motive power, and can promptly and accurately govern her own movements. The duty of avoiding the leading ship being imposed by law upon the one following, in case of collision the burden of proof is cast upon the latter to show the prudence of her own conduct, the negligence of the one leading, and that the collision was not caused by fault on her own part.
>
> . . .
>
> "Under the rules no subsequent alteration of the position of the vessels can make the one following other than an overtaking vessel, or relieve her from the duty of keeping clear of the leading ship until fully past and clear; and it is her duty to take such reasonable precautions as may be necessary to avoid the other, the burden of proof being upon her to show that such precautions were timely and sufficient. While the leading vessel has

the right of way, she may not wilfully cross the path of the other without forfeiting all right of recovery for collision ensuing therefrom, even though the overtaking vessel be not wholly without fault."

The overtaking vessel assumes the risk of determining when and where a safe passage can be made after due consideration of all the factors entering into the situation. As was said by Judge Betts in the Steamer "RHODE ISLAND," Olcott 505; Fed. Cas. 11,745:

> "The approaching vessel, when she has command of her movement, takes upon herself the peril of determining whether a safe passage remains for her beside the one preceding her, and must bear the consequences of misjudgment in that respect."

This decision of Judge Betts' in the "RHODE ISLAND" was referred to with approval by the Supreme Court of the United States in *Whitridge, et al., v. Dill, et al.*, 23 How. 448.

The duty of an overtaking vessel *is to keep out of the way of the overtaken vessel.* As was said by Circuit Judge Waddell in the "CITY OF BALTIMORE," 282 Fed. 490, C. C. A. 4th Cir. (1922), at page 492:

> "She was an overtaking vessel, charged specifically with the duty of securing the assent of the other vessel before attempting to pass, and at the same time with the duty of keeping clear and out of the way of the overtaken vessel. Rules of Navigation, article 18, rule 8 (Comp. St. Sec. 7892); also articles 21, 22, 23 and 24 (Sections 7895-7898). The Aureole, 113 Fed. 224, 51 C. C. A. 181; The Sif (D. C.), 181 Fed. 412; Atlas Transportation Co. v. Lee Line Steamers, 235 Fed. 492, 149 C. C. A. 38, The Samarinda, 244 Fed. 744, 157 C. C. A. 192; The Hampden (C C. A.), 276 Fed. 399."

Furthermore, the assent of an overtaken vessel to the passing signal of an overtaking vessel merely expresses an understanding of what the overtaking vessel intends to do and an agreement not to thwart it by any change of course. The most recent expression of this Court on the subject is found in the "THOROUGHFARE," *supra*. The facts in that case are not relevant here but the language of the Court is important. Mr. Justice Sanford in the opinion said (48 Sup. Ct. 511):

> "The 'RELIEF' was not at fault in accepting the passing signal of the 'THOROUGHFARE.' This was merely an assent to the proposed passage in the rear of the 'ENTERPRISE,' expressing an understanding of what the 'THOROUGHFARE' proposed to do and an agreement not to endanger or thwart it by permitting an interfering change in the position of the 'ENTERPRISE.' *See Atlas Transp. Co. v. Lee Line Steamers* (C. C. A.), 235 Fed. 492, 495."

The situation presented in the present case is most nearly paralleled in *Atlas Transportation Co. v. Lee Line Steamers, supra,* approved by this Court in the "THOROUGHFARE." In that case the steamship "REES LEE" attempted to pass the steamtug "JOSH COOK" with four barges in tow, and collided with the barges. Passing signals had been exchanged between the "REES LEE" and the "JOSH COOK," and as to the effect of these signals and the effect of the assent of the "JOSH COOK" to the passing signal of the "REES LEE," the Court said page 495:

> "The Rees Lee had the right to pass the other boat if it could do so with safety to both. It had to be its own judge as to the matter of safety, as whatever risk attended its passage from the narrowness of channel, the shallowness of water, the current, suction, or other causes, except the fault of the Josh Cook, was assumed by the Rees Lee. *The reply of the Josh Cook to the passing signal of the Rees Lee was no*

more than an assent to it, at the risk of the vessel proposing it. It expressed an understanding of what the Rees Lee proposed to do, and an agreement not to thwart it; but the success of the maneuver was at the risk of the Rees Lee." (Italics ours.)

The owners of the "Rees Lee," the overtaking vessel in that case, filed a petition for rehearing *on the ground that the* "Josh Cook" *was negligent in whistling its assent for the* "Rees Lee" *to pass at a dangerous place. Atlas Transportation Co. v. Lee Line Steamers,* (1916) 238 Fed. 349. This petition was denied. The Court said:

> "The Josh Cook by its signal of two whistles (the passing signals) did not assent that the Rees Lee could pass recklessly but only that it could pass safely, if properly navigated. It assented that it could pass at a proper distance and a proper speed. . . . The testimony is convincing that the place was safe for passing, if the Rees Lee had passed slowly."

Proctor for the overtaking vessel filed a petition for writ of certiorari to the Supreme Court, which petition was refused, *Lee Line Steamers, Petitioner, v. Atlas Transportation Company,* 243 U. S. 643.

Point II. The "Taurus" Was Not Guilty of Fault in Assenting to the Passing Signal of the "Gulftrade" and the Circuit Court of Appeals Erred in so Finding.

The situation and the duties of the respective vessels, with reference thereto, being clear, a brief discussion of the issues, the findings and rulings of the District Court and the Circuit Court of Appeals, clearly indicates that the decision of the latter Court was erroneous.

In this case, the "GULFTRADE," while proceeding under her own power and in charge of two tugs, ran down the burdensome, heavy tow in clear weather and in the day time, causing loss of life and property. The sole defense pleaded and urged at the trial and upon argument before the Circuit Court of Appeals was that immediately preceding the collision, the "TAURUS," heavily burdened as she was, failed to maintain her course and speed, but sheered to the starboard so that the scows in her tow were carried to starboard and across the course of the "GULFTRADE."

Both the District Court and the Circuit Court of Appeals found against the "GULFTRADE" on this issue, the collision being explained by the Circuit Court of Appeals in the following language (R., 580):

> "When her bow (referring to the 'GULFTRADE') at the slow rate of speed she was going was turned into the dead water of the Schuylkill, her stern was naturally swinging farther and farther up the Delaware so that she had to round up also from her position, and meanwhile her stern being carried up the Delaware, her bow naturally tended over to the western bank of the Schuylkill and headed in that direction while she was being straightened out."

While the above may have been a natural movement on the part of the "GULFTRADE," it was something which the "TAURUS," an overtaken vessel, was not bound to anticipate as causing a condition dangerous to a passage. This was a situation wholly within the control of the "GULFTRADE." She had two powerful tugs accompanying her lashed to her port side, one at the bow and one at the stern, and these tugs could have been maneuvered to hold her bow off to starboard and her stern to port as she entered the Schuylkill and to prevent them swinging into collision with the scows in

tow of the "TAURUS." It was clearly no part of the duty of the "TAURUS" to anticipate that the "GULFTRADE" would fail to control her movements and by such failure convert a situation safe for passage into an unsafe one.

Under the decisions, this was wholly the duty of the "GULFTRADE." The risk of the maneuver was wholly upon her and it was the duty of the "TAURUS" only to maintain her course and speed or to give way to port, which she, in fact, did and which it has been found that she did by both courts having the matter under consideration.

The District Court in this connection said (R., 550):

> "The tug in charge of the tow knew that the steamship must hug more or less closely mid channel whereas the tug and its tow were not so restricted. This made it the duty of the tug to keep well to the westward and this we find as a fact it did so far as conditions present did not prevent."

The Circuit Court of Appeals was satisfied that the tug was out of the channel and bearing to the westward, but that the tail of the tow was still in the channel when the collision occurred. It said, referring to the effect of the tide on the "TAURUS" and its tow (R., 580):

> "The result would naturally be that while the 'TAURUS' may have been and probably did go to the westward of the channel herself, that the tail-end of her tow was considerably out into the mid-channel of the Schuylkill and it would take time to straighten out her tow. We are satisfied from the proof and the circumstances that the tail of the tow was still in the channel when the collision occurred."

Both courts also found that the "TAURUS" did not sheer across to starboard and on to the course of the "GULFTRADE." The District Court said (R., 549):

> "there is a like improbability that the tug sheered to the eastward because there was no reason for her to do so, and even if she did, the first effect of the movement would have been to have carried the stern scows not into but away from the course of the steamship. . . . The fact that the towing tug to counteract the second swing of her tow and straighten it out ported her helm for a moment is of no significance. It was a called for thing to do and did not contribute to the collision."

The Circuit Court of Appeals said (R., 579):

> "It is unreasonable to suppose that the 'TAURUS,' if she and her tow were out of the channel, took a sheer to get into it."

It is thus clear that both lower courts dismissed the allegation of fault against the "TAURUS," to wit, that she sheered into the course of the "GULFTRADE," and found that she maintained her course and speed. This was her obligation under the law, and this obligation she fulfilled.

In the face of these findings, however, the Circuit Court of Appeals found that the "TAURUS" was partly at fault for the collision in assenting to the passing signals of the "GULFTRADE." The following language, from the opinion of the Circuit Court of Appeals, gives the ground for its decision (R., 581):

> "When the whistle of the 'GULFTRADE' blew, the 'TAURUS' certainly was not in a position to let the 'GULFTRADE' pass in safety, but she, nevertheless, agreed that the 'GULFTRADE' come ahead. Later on, the 'GULFTRADE' evidently became anxious and blew another blast, to which the 'TAURUS' gave the same consent to go ahead, and while there is some question as to whether the 'GULF-

TRADE' blew a third blast and got the same consent, we are inclined to think she did. Now it seems to us that under the circumstances, the 'TAURUS' was in fault in giving these three consents to the 'GULFTRADE' to come ahead, relying too much on her ability to get out of the channel."

In making these findings, the Circuit Court of Appeals erred in the following respects:

(a) *That at the time the passing signals were exchanged, the "TAURUS" was not in a position to let the "GULFTRADE" pass in safety.*

It was not contended by any of the parties to this cause at any time during the proceeding that at the time the passing signals were exchanged, the two flotillas could not have passed each other with safety. There is no intimation of this in the pleadings, nor in the briefs, nor in the argument before the District Court or the Circuit Court of Appeals.

A brief reference to the testimony indicates that the witnesses on both sides agreed that until a few moments prior to the collision, the courses of the vessels were such that the passage could have been effected with safety and there is no intimation anywhere in the record that the "GULFTRADE" could not have held her course over to starboard if she had so desired.

The Master of the "TRITON" testified that after the third whistle signal was blown there was sufficient clearance room for the "GULFTRADE" to pass the tug sixty or seventy feet. His testimony is as follows (R., 380):

"Q. If the 'TAURUS' had held her course, that is the course that she was on before she took that sheer, and the 'GULFTRADE' had held her course then, would there have been clearance room for the two tows, and if so what would have been the distance between them in passing?

"A. At that time I should say that we would have gone by her sixty to seventy feet.

"Q. And you were standing there looking at them all of the time?

"A. Yes, sir.

"Q. Would that have been a safe clearance in your opinion or not?

"A. Yes, sir.

"Q. From your experience in taking vessels up there would there have been danger in passing that close?

"A. I do not think there would have been any danger in passing that close to them.

"Q. Were you in the channel?

"A. Yes, sir; we had to keep in the channel there with that deep draft vessel."

The master of the "CHURCHMAN," also on the bridge of the "GULFTRADE," testified to the same effect (R., 325-26) and stated that if the "TAURUS" and the "GULFTRADE" had maintained their respective courses at the time the last whistle signal was exchanged, the "GULFTRADE" would have passed the tow fifty to seventy-five feet from her. The master of the "GULFTRADE" stated that when the "GULFTRADE" was two hundred feet astern of the tow, the tow was one hundred feet off to her port (R., 506). The pilot of the "TRITON" testified to the same effect, saying that at the time the last one-blast whistle signals were exchanged, the "TAURUS" was about four points off the port bow of the "GULFTRADE." The second officer of the "GULFTRADE" testified to the same effect (R., 523, 524, 530). The effect of the testimony of the witnesses from the tug "TAURUS" is the same (R., 37, 60, 73, 115, 137).

The answers of both the Independent Pier Company and the Gulf Refining Company, respondents, state that there was ample width of channel room and

the two flotillas were in a position to pass in safety after the exchange of signals (R., 20, 27).

In view of the pleadings, testimony and the position taken by the parties to this litigation, it is difficult to see how the Circuit Court of Appeals could have reached the conclusion referred to, and which seems to be negatived by its own explanation of the collision that the bow of the "GULFTRADE," turning into the dead water of the Schuylkill, swung to port as her stern swung to starboard.

Clearly, the Court was in error in this respect, but even assuming the fact as found, the Court erred in its interpretation of the Rules of Navigation under the circumstances and in finding:

(b) *That the* "TAURUS" *was at fault for assenting to the passage by the* "GULFTRADE."

Under the rules and the cases referred to under Point I, the only duty on the part of the "TAURUS," after the exchange of passing signals, was to maintain her course and speed and she was not at fault in assenting to the passage by the "GULFTRADE" unless it was unsafe for the "GULFTRADE" to attempt to pass at that point because of some danger apparent to the "TAURUS" and not to the "GULFTRADE," such as a necessary change in the course of the "TAURUS" or some other condition known to herself and not to the overtaking vessel.

The assent by the "TAURUS" to the passing signal of the "GULFTRADE" amounted to this: That the "TAURUS" knew the "GULFTRADE" would attempt to pass; that the "TAURUS" undertook to maintain its course and speed and that so far as those in charge of it could see, there was no danger in the passage because of the place chosen therefor and because of anything or any circumstances for which the tug and its tow were responsible.

It has been found by both Courts that the "TAURUS" maintained its course and speed and did not sheer to starboard on to the course of the "GULFTRADE" as alleged by that vessel.

On the other hand, under the law, the burden was upon the "GULFTRADE" to pass with care at a proper place and at a proper distance from the tow. It was the duty of the "GULFTRADE" to determine whether she would pass the "TAURUS" at the particular point chosen.

The situation was obvious to those in charge of the "GULFTRADE." Her officers and the masters of the two tugs, who were all on her bridge, knew what she was drawing, what depth of water she would need, what depth of water was available and the width of the channel. They could see the "TAURUS" going off to port and her tow swinging somewhat to starboard from the effect of the flood tide. They testified that they were in a position when they rounded into the river to pass the "TAURUS" in safety, but whether they could or not was a matter for their judgment and theirs alone and was something with which the officers of the "TAURUS" were in no way involved. The "TAURUS" was only bound to warn the "GULFTRADE" as to dangers not obvious to that vessel.

As was said by Circuit Judge Woods in the "DORSET," C. C. A. 4th Cir. (1919) 260 Fed. 32, in commenting upon the decision in *Atlas Transportation Co. v. Lee Line Steamers*, page 34.

> "Atlas Trans. Co. v. Lee Line Steamers, 235 Fed. 492, 149 C. C. A. 38, is relied on as holding the signal of the Crisfield and the assent of the Dorset imposed no obligation on the Dorset but that was an overtaking case where ordinarily *there is no duty on the overtaken vessel except to keep her course unless she perceived danger not obvious to the overtaking vessel.*"

IX. CONCLUSION.

Further comment is unnecessary. The law is clear as to the duties and responsibility of overtaking and overtaken vessels respectively, and it is well established that the burden of passage is not shared equally between the two. The overtaking vessel must keep out of the way. She must pick the place of passage. She must pass at a proper distance. She must observe care in the matter of speed, and an overtaken vessel has no duty or obligation whatsoever, except to maintain her course and speed, or unless she knows of some danger not obvious to the overtaking vessel.

In the present case as far as the "TAURUS" was concerned, it was perfectly safe for the "GULFTRADE" to pass. It was found by both Courts that the "TAURUS" maintained her course and speed, and furthermore gave way to port to give the "GULFTRADE" all the passageway possible. She was not required to do this by the rules, but on the other hand, the rules contemplate that the overtaking vessel shall steer to port or to starboard after receiving an assent to a passing signal in order to keep out of the way of the overtaken vessel. There is no indication in the record that such a change of course was made by the "GULFTRADE," but insofar as the "TAURUS" was concerned there was no reason why the "GULFTRADE" should not pass at such place as was safe having regard to the draft of the "GULFTRADE," the width of the deep water channel and all other factors known to her own navigators and to be considered in passing at a given point. The "TAURUS" therefore assented to the passage, and it was then the obligation of the "GULFTRADE" if she had room to pass at that point to port her helm to round the "TAURUS." If there was not room enough at that particular point to effect the passage with safety, the obligation was

upon the "GULFTRADE" to wait until there was such room or such depth of water. This she failed to do, but there was no obligation upon the "TAURUS" to anticipate her failure to do so.

The decision of the Circuit Court of Appeals, however, imposes that duty upon the overtaken vessel and places upon it too great a burden, going far in the directing of making both the overtaking and overtaken vessel assume an equal share of the responsibility for a safe passage.

In so holding, the decision is at variance with the well established rules on the subject and should be reversed and the decision of the District Court affirmed.

Respectfully submitted,

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Proctors for Petitioner.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 22

CHARLES WARNER COMPANY,

Petitioner,

vs.

INDEPENDENT PIER COMPANY,

Respondent.

No. 23

CHARLES WARNER COMPANY,

Petitioner,

vs.

STEAMSHIP GULFTRADE, WESTROP GULF REFINING COMPANY IS CLAIMANT.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR STEAMSHIP GULFTRADE AND GULF REFINING COMPANY, RESPONDENT

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BRIEF FOR STEAMSHIP GULFTRADE AND GULF REFINING COMPANY, RESPONDENT

These are writs of certiorari to review a decision of the Circuit Court of Appeals for the Third Circuit modifying a decree of the District Court (Dickinson, *J.*) for the Eastern District of Pennsylvania.

The cause of action arose out of a collision which occurred on October 1, 1923, in daylight, at the juncture of the Delaware and Schuylkill rivers, between the steamship *Gulftrade* and a hawser tow of barges in tow of the steamtug *Taurus* owned by Petitioner. At the time of the collision the steamship *Gulftrade* was being assisted by steamtugs *Triton* and *F. A. Churchman* furnished by respondent Independent Pier Company. The master of the tug *Triton* was on the *Gulftrade's* bridge in exclusive charge of the *Gulftrade's* navigation as well as the manœuvring of the tugs *Triton* and *Churchman*, all of which were acting under his orders.

The libel was filed by Charles Warner Company, owner of the barges, against the steamship *Gulftrade* and tugs *Triton* and *Churchman in rem* and against Independent Pier Company and Alfred C. Churchman, owners of the tugs, and Gulf Refining Company, owner of the steamship, *in personam*, to recover for damages sustained by the barges as a result of collision with the *Gulftrade*.

Facts

On October 1, 1923, the steamship *Gulftrade*, loaded with a cargo of oil in bulk, was proceeding up the Delaware River bound for Girard Point, Philadelphia. The weather was fair, tide flood, wind northerly. The *Gulftrade* is a single screw vessel of 6,589 tons gross and 4,949 tons net register, 429.3 feet long, 59.2 feet beam and was drawing 26½ to 27 feet (R. 6, 16, 24, 462, 464, 482, 547).

When about off Port Mifflin the *Gulftrade* was met by tugs *F. A. Churchman* and *Triton*, furnished by the Independent Pier Company, which tugs were to assist the *Gulftrade* to a berth at Girard Point. The *Churchman* made fast on the *Gulftrade's* port bow and the *Triton* on her port quar-

ter. The masters of both tugs went on the steamer's bridge. The master of the *Triton* took entire charge and thereafter directed the navigation of the steamer and tugs. The *Gulftrade's* officers were at their customary stations while entering port but took no part in the navigation of the vessel other than to execute such orders as they received from the tug master in charge (R. 370, 401, 547).*

The tug *Taurus*, owned by Charles Warner Company, with loaded scows *Nos. 18, 33, 44,* and *53,* also owned by Charles Warner Company, in tow on hawsers astern, was proceeding up the Delaware ahead of the *Gulftrade* bound for wharves on the Schuylkill River. The *Taurus's* tow was made up in two tiers of two boats each, *No. 53* was the port hawser boat, *No. 18* the starboard hawser boat, *No. 44* the port boat in the second tier, and *No. 33* the starboard boat in the second tier. The flotilla was over 400 feet long and was drawing not over 10 feet (R. 33-34, 547).

The *Gulftrade* was gradually overhauling the tow and exchanged several one blast passing signals with the *Taurus* (The Circuit Court of Appeals found that two and probably three one blast passing signals were exchanged, R. 581). As the *Gulftrade* was about to pass on the starboard side of the tow, as agreed by exchange of one blast signals, the tow sheered or swung to starboard across the *Gulftrade's* course (R. 548, 550, 580-1). The *Gulftrade's* helm was put hard aport, her assisting tugs hard aported, and her engines, as

* The answer filed in behalf of the Independent Pier Company alleged that the navigation of the *Gulftrade* and the tugs was under the order and direction of the officers of the *Gulftrade* but this contention was abandoned at the trial and it was admitted by counsel for the Independent Pier Company that the navigation of the *Gulftrade* and tugs *Triton* and *Churchman* was in the entire charge of the master of the tug *Triton* (R. 192).

well as those of both tugs were used in attempting to swing the *Gulftrade* away from the swinging tow but it was impossible to avoid collision; the starboard boats of the *Taurus's* long hawser tow fetched up against the *Gulftrade's* port bow resulting in damages to scows *Nos. 33, 44* and *18*, loss of cargo on *No. 18* and loss of life of the captain of *No. 18* (R. 377-82).

Decisions Below

The District Court found that the tail of the *Taurus's* hawser tow swung to eastward athwart the channel and across the *Gulftrade's* course. The Court held however that those in charge of the *Gulftrade* were bound to anticipate the swinging of the tow, and that in spite of the agreement, by exchange of one blast passing signals, for the *Gulftrade* to pass on the starboard side of the *Taurus* and her tow, the *Gulftrade* was at fault for the collision (R. 548, 550).

The Circuit Court of Appeals agreed with the finding of the District Court as to the swinging of the tow and held that the *Taurus* was at fault for not keeping her tow in line, *i. e.*, allowing her tow to swing across the channel and embarrass the *Gulftrade* in passing (R. 580-1).

Both the District Court and the Circuit Court of Appeals held also that, although the *Gulftrade's* navigation was in entire charge of the master of the tug *Triton*, who was a servant of the Independent Pier Company, which had contracted to move the *Gulftrade* and berth her, the *Gulftrade* was liable for the negligence of the Independent Pier Company's servant (District Court Opinion, R. 551; Circuit Court of Appeals' Opinion, R. 579, 582).

The final decree reads

"1. That the libellant in the above entitled cause recover of Independent Pier Company, one of the respondents herein,

primarily and from the steamship *Gulftrade* and its stipulator, secondarily, the amount of its damages arising out of the matter set forth in the libel herein, together with interest and costs, and that the said steamship be condemned therefor. Execution against the steamship *Gulftrade* and its stipulator only to be had in the event of failure to collect against the Independent Pier Company."

2. That the libel herein be dismissed as against the steamtug *Triton* * * * (R. 552-3).

Summary of Argument

We shall argue:

1. That the collision was due solely to the failure of the *Taurus* to keep her tow in line.

2. That the steamship *Gulftrade* is not liable *in rem* for the negligence, if any, of the master of the tug *Triton*, who was the servant of the Independent Pier Company.

3. That the tug *Triton* should be held liable *in rem* for the negligence, if any, of her master, who was in charge of the navigation of both the steamship *Gulftrade* and the steamtug *Triton*.

ARGUMENT

POINT I

THE COLLISION WAS DUE SOLELY TO THE FAILURE OF THE TAURUS TO KEEP HER TOW IN LINE.

It is unnecessary to argue or quote at length the testimony substantiating the swing of the *Taurus's* hawser tow. It was clearly testified to by the *Taurus's* pilot. He testified:

"I hauled the tug and the tow under the westerly shore as close as possible to make the mouth of the Schuylkill River, keeping them out of the tide as much as possible.

* * * * * * *

"After the tow was clear of the buoy, going into the mouth of the Schuylkill, the stern barges swung out toward mid-channel. I then ported my wheel for an instant, bearing my tug to the starboard.

Q. What was the purpose of that? A. The purpose of that was to throw the stern (of the) tow to the westerly shore; to pull them in out of the mid-channel.

Q. How long did you keep your wheel to port? A. About half a minute.

Q. And then what was your next movement of the wheel? A. I starboarded my wheel to haul her back on the original course." (R. 36-7).

Again:

"Q. Mr. Dawson asked you about your tow swinging out to mid-channel. Just how far out had your tow swung, as far as you can recollect? A. What part of the tug swung?

Q. Yes. A. The stern of the stern barges in tow swung out near mid-channel.

* * * * * *

Q. About the mid-channel mark? A. About the mid-channel mark" (R. 55-6).

That the tow was swinging athwart-stream was found by the District Court, who attributed the swinging to the tide, saying:

"One condition was, as already stated, that the set of the tide swung the tail of the tow to the eastward and more or less athwart the channel until it had straightened out. It can thus easily be found that the tow was close to mid-channel as the swing into the Schuylkill was about completed" (R. 550).

The Circuit Court of Appeals agreed with the finding of the District Court, saying:

"The *Taurus* with the scows came up the Delaware and rounded into the Schuylkill. She had several hundred feet of scows and hawsers following her. The scows were heavily loaded with sand and gravel, and naturally from the impulse of the tug, the wind and the tide, had a very considerable dead weight straight-ahead impetus. It would, therefore, take some time for the *Taurus* to pull the first breast of barges out of the Delaware tide into the Schuylkill dead water and it would take still further time to pull the last breast of the heavy laden scows in the same direction. The result would naturally be that while the *Taurus* may have been and probably did get to the westward of the channel herself that the tail-end of her tow was considerably out into the mid-channel of the Schuylkill and it would take time to straighten out her tow. We are satisfied from the proof and the circumstances that the tail of the tow was still in the channel when the collision occurred" (R. 580).

The testimony of the pilot of the *Taurus* with reference to the swing of his tow, as well as the finding of the District Court and Circuit Court of Appeals that the tow did swing athwart-channel, is entirely consistent with the testimony of the pilot of the *Gulftrade* that the *Taurus* sheered first to port, then to starboard, which had the effect of swinging the tow to starboard across the course of the *Gulftrade* (R. 376-7).

It is true that the pilot of the *Taurus* testified that the changes of helm were to counteract the effect of the tide, but it is immaterial whether the changes of helm were the cause or the effect of the tow swinging. In either case the tow was swinging athwart-stream. Whatever the reason for the tow swinging athwart the channel, the *Taurus* cannot escape liability for not keeping her tow straight behind her. This is especially so as she was without an assisting tug.

In *The Wrestler,* 232 Fed. 448 (C. C. A. 2nd Cir.), the tug with a hawser tow was held solely at fault on this account. The Court said:

"As the effect of both the wind and the tide would have been to swing the tail of the tug's tow toward New York if she was going straight up in the center of the river at this point, we think the admitted swing of her tail was caused by her own navigation. It may be that to counteract the set of the tide toward New York the tug, which is a powerful one, first ported and then when she got into the eddy tide hard astarboarded.

* * * * * *

"Tugs which have long tows in tidewaters must see to it that they control their tows sufficiently to prevent them from doing harm to other vessels. We think the *Wyomissing* solely at fault" (p. 450).

In *The Aurora,* 258 Fed. 439 (C. C. A. 2nd Cir.), the Court held the hawser tow solely liable for failing to keep her tow in line, saying:

"The cause of the collision, undoubtedly, was the effect of the tide in swinging the tail of the *Aurora's* tow toward Staten Island, but this swing could not be increased by her porting the wheel as she passed the *Busby.* The tow swung so far on the port side that one of the witnesses says he could see the *Aurora's* stern, and she was sheering a little toward Staten Island—this probably due to her porting the wheel. If the tow was following the sheering tug, the tail of the tow must have swung toward Staten Island, considering the loca-

tion as given by the *Aurora's* witnesses of its tow; and considering the space occupied by having four barges abreast, and the fact that the *Aurora's* tow were light barges, it is quite apparent that the *Busby* then was several hundred feet off the Staten Island shore and the *Aurora* crowded her over into this position. * * *

"The fault may well be predicated upon the Aurora alone, with such a long tow in tide waters in an uncontrollable state. She was obliged to keep her tow in line, and if she had not sufficient power to do this alone, it was incumbent upon her to employ helpers. The *Busby* went as close to the Staten Island shore as safety would permit, and we are of the opinion that she should be exonerated from fault" (p. 441).

In *The Madison*, 250 Fed. 850 (C. C. A., 2nd Cir.) a collision between a hawser tow and a tug with a float, the Court held the hawser tow at fault, saying:

"* * * the obligation to keep tows in line was recognized by this court in the case just cited. If the tugs have not sufficient power to do this alone, they must employ helpers, as many do" (pp. 851-2).

See also

The S. S. Wyckoff, 138 Fed. 418;
The R. J. Moran, 299 Fed. 500;
The Genessee, 138 Fed. 549;
The Zouave, 122 Fed. 890;
The Overbrook, 149 Fed. 785;
The Pencoyd, 157 Fed. 134;
Thames Towboat Co. v. *Penn. R. R. Co.*, 157 Fed. 305, 307;
The George W. Childs, 67 Fed. 269.

Counsel for petitioner state that the sole defense pleaded and urged at the trial and upon the argument in the Circuit Court of Appeals (in behalf of the *Gulftrade* and Independent Pier Company) was that the *Taurus* sheered to starboard so

that the scows in her tow were carried to starboard and across the course of the *Gulftrade* (Brief, p. 16). Then counsel mistakenly assert:

"Both the District Court and the Circuit Court of Appeals found against the *Gulftrade* on this issue, * * *" (Brief, p. 16).

A similar statement is made again in petitioner's brief at page 18.

Counsel are mistaken. The allegations of fault in the pleadings of both the Independent Pier Company and the Gulf Refining Company, complain of the *Taurus* for failing to keep her tow tailing properly behind her and for crowding upon the course of the *Gulftrade* (R. 21-2, 28). Furthermore, this point was urged at the trial in the District Court, briefed in the District Court, urged at the argument in the Circuit Court of Appeals and briefed in the Circuit Court of Appeals, as it is in this Court. It is a mere play upon words to assert that the lower courts dismissed the allegation of fault against the *Taurus* to wit, that she "sheered into the course of the *Gulftrade*" (Petitioner's Brief, p. 18). The fact is that both Courts found that the *Taurus's* hawser tow swung to eastward athwart the channel and across the *Gulftrade's* course, thus embarrassing the *Gulftrade* (R. 548, 580).

It is immaterial whether the manœuvre of the tow is referred to as *swinging* or *sheering* athwart-channel. The result is exactly the same in so far as the *Gulftrade* was embarrassed by the swinging tow.

The Thoroughfare (*Southern Pacific Company* v. *Haglund*), 48 Sup. Ct. 511, 1928 A. M. C. 965, referred to in petitioner's brief (p. 14) was not an overtaking situation; it was one of special circumstances. There a steamer, without steam, was lying across the channel. The facts are not comparable with those presented in this case.

Atlas Transportation Company v. *Lee Line Steamers*, 235 Fed. 492 (Petitioner's Brief, p. 14), is analogous to the case at bar only in that both presented an overtaking situation. There the steamship *Rees Lee* attempted to overtake and pass the tug *Josh Cook*, and while doing so became unmanageable and was turned across the channel and into collision with the tug's tow. The Court said:

"The witnesses agree that as soon as the passing signal had been given, the *Josh Cook* yielded some of the channel to the passing boat" (p. 497).

Instead of embarrassing the overtaking vessel, as did the *Taurus* in this case, the *Josh Cook* made room for her.

POINT II

THE INDEPENDENT PIER COMPANY IS LIABLE FOR THE NEGLIGENCE OF ITS SERVANT, MASTER OF THE TUG TRITON, WHO WAS IN CHARGE OF THE NAVIGATION OF BOTH THE STEAMSHIP GULFTRADE AND THE STEAMTUG TRITON.

It is not disputed that the master of the tug *Triton*, was in full charge of the navigation of the *Gulftrade*, as well as the tugs *Triton* and *Churchman*, which were assisting the *Gulftrade*, from the time he went on the steamer's bridge off Fort Mifflin until after the collision. He testified:

"Q. You were in full charge of the navigation of the *Gulftrade* and her two attending tugs? A. Yes, sir; I gave all of the orders that were given there that day.
Q. Were all of those orders obeyed promptly? A. They were" (R. 401).

The District Court so found, saying:

"We make the fact finding that the tug owners (through their servants the masters of the piloting tugs) were the

navigators of the steamship whose negligence, in which all the individual respondents participated, was the proximate cause of the damage done. We conclude from this the liability of such owners" (R. 551).

It is well settled that when the manœuvring of a steamer, using her own propelling power, is directed by a tug master who boards the steamer for that purpose, the tug master is the servant or agent of the tugboat company (in this case Independent Pier Company) and if damage results from the tug master's negligence, the tugboat company is responsible. Indeed, counsel for Independent Pier Company admitted upon the trial that any fault in the steamer's navigation was chargeable to the Independent Pier Company. Mr. Long said:

"Mr. Long: If Your Honor pleases, you are familiar with this situation. You had it in the Kellog case, and you had it in the Paulsboro case. Our captain went on the bridge of this steamer, and gave the orders, we using the steamer's propelling power, and under your Honor's opinion, I think it is only fair to admit that if there is any fault to be found on the part of the steamer, it is going to fall on our shoulders in the end. I say to you, frankly, that I can not see that the steamer was guilty of any fault, and I shall certainly argue to you, very strenuously, that the two tugs were not at fault, because they were not doing anything. If the *Gulftrade* is found at fault by your Honor, the employer or the captain of the *Triton* will have to stand it" (R. 192).

A recent case in the same circuit is *The Caspian,* 14 Fed. 2nd, 1006, 1009, affirmed 14 Fed. 2nd 1013, holding that the tugboat company was responsible for the negligence, if any, of the tug master under similar circumstances.

The cases in the second circuit are to the same effect.

In *The Coamo,* affirmed on appeal, 267 Fed. 686, Dalzell & Company (tugboat company) furnished two tugs to assist the steamer *Coamo,* under her own steam, from Atlantic

Basin, Brooklyn, to American Sugar Refinery Company's pier, Williamsburg, New York. The tugs *W. F. Dalzell* and *Henry Ackerman* were sent to assist the *Coamo*. The master of the *W. F. Dalzell* went on the steamer's bridge and took charge of the manœuvre. The master and third officer of the *Coamo* were on the bridge, and a quartermaster was at the wheel. The *Coamo* proceeded up the East River and rounded to a little below the American Sugar Refinery pier at Williamsburg. The steamer was gradually turned by means of her own engines and assisted by the tugs *Dalzell* and *Ackerman* on either side. While manœuvring in the river the *Coamo* collided with a cattle barge in tow of a tug, damaging the steamer's stern and rudder, also the barge.

Dalzell & Company, in the same position as the Independent Pier Company here, contended that the master of the *Dalzell* did not take charge of the *Coamo's* navigation, and that if he did, he was the servant of the steamship. The District Court held that the steamer was in charge of the tug master; that the collision was due to the tug master's negligence, and that Dalzell, his employer, was liable, as well as the tug of which he was master. Upon appeal the decision was affirmed as to the liability of the tug owner *in personam* and modified by relieving the tug *W. F. Dalzell* from liability *in rem*.

In *The Procida*, 278 Fed. 895, the S. S. *Procida* was being shifted by the tugs *John J. Timmins, Edward G. Murray* and *McCaldin Brothers*. During the operation, the *Procida* came into collision with another vessel and sustained damages for which the owner of the *Procida* brought suit against Edward M. Timmins (tug owner) *in personam* and against the tugs *in rem*. The District Court held Timmins liable *in personam* for the negligence of the tug master who was in charge of

the manœuvre. The Court also held the tug *Edward G. Murray* liable *in rem* and exonerated the other assisting tugs, *John J. Timmins* and *McCaldin Brothers.*

See also *The Sarnia,* 261 Fed. 900.

In the Fourth Circuit the same result has been reached.

The Dorset, 260 Fed. 32;

The John D. Rockefeller, 260 Fed. 982;

The Cromwell, 247 Fed. 207; aff'd 259 Fed. 166.

POINT III

THE STEAMSHIP GULFTRADE IS NOT (SECONDARILY) LIABLE FOR THE NEGLIGENCE, IF ANY, OF THE SERVANT (TUG MASTER) OF INDEPENDENT PIER COMPANY.

The District Court justified holding the *Gulftrade* liable by assuming her negligence. The Court said:

"Assuming the negligence of the steamship, there is no doubt of her responsibility, as she did the damage" (R. 551).

The Circuit Court of Appeals apparently also assumed the *Gulftrade's* negligence inasmuch as the question was not discussed by that Court.

This decision, holding the *Gulftrade* liable *in rem* for the negligence of the servant of the Independent Pier Company, is in conflict with decisions in other Circuits where a tug owner, under these circumstances, is held to be an independent contractor, and solely responsible for any negligence on the part of the tug master.

In *The Dorset,* 260 Fed. 32 (C. C. A. 4th Circuit), the steamship *Dorset,* a twin screw vessel, was moving from her pier, assisted by tugs of the Lambert's Point Towboat Com-

pany. The master of the tug *Pocahontas* went on the steamer's bridge and took charge of the manœuvre. The *Dorset* moved out from the pier under her own engines and when about halfway out, the tug *Crisfield* with barge *No. 18* in tow, bound down the channel, collided with the *Dorset's* stern. The Court exonerated the steamer and held the towing company as an independent contractor, saying:

"It remains to say that the owners of the *Dorset* were not liable for the faults in her navigation. She was under the exclusive control of Mills, not as a pilot, but as the master of the tug *Pocahontas*, employed by the agents of the *Dorset* to take her from the dock and start her to sea, and the tug was actually pushing her in making the manœuvre. Under these circumstances the negligence in the navigation of the *Dorset* was the negligence of the towing company as an independent contractor" (p. 35).

In *The Cromwell*, 247 Fed. 207, affirmed 259 Fed. 166 (C. C. A. 4th Circuit), the steamship *Cromwell* was manœuvring under her own engines in charge of a tugmaster who was on the steamer's bridge. A collision occurred while the manœuvre was in progress. The situation was the same as in the instant case. The Circuit Court of Appeals exonerated the steamer and held the towing company as an independent contractor, saying:

"But the evidence of Henry Whyte shows clearly that Sanders was not a mere pilot of the *Cromwell*, but was the commander of the tug *Gladiator*, under the authority of its owners, who had contracted that the tug should tow the *Cromwell* up the river to the draw where it was to unload. * * * The owners of the tug having thus entered into an independent contract of towing, the tug alone would be responsible for negligence in the undertaking, unless officers of the *Cromwell* retained some control of the ship and were guilty of some negligence. It is true her master and crew were on the *Cromwell*, carrying out the orders of Sanders, but they did nothing more, and in that relation they were mere instrumentalities or means used by Sanders to apply the wheel, engine, and other instruments of navigation—

not participants in the navigation. Hence it seems evident that, if the injury to bridge was due to negligence, it was that of the towing company, owner of the tug, as an independent contractor, for which the *Cromwell* was not responsible" (p. 171).

In *The John D. Rockefeller,* 260 Fed. 982 (E. D. Va.), the same conclusion was reached. There the S. S. *Falls City,* using her own propelling power, assisted by two tugs, collided with the *John D. Rockefeller.* The master of one of the tugs was on the steamer's bridge in charge. The Court held the tug owners alone at fault and exonerated the *Falls City,* saying:

"The law applicable to and fixing the rights of the parties, upon the statements of facts indicated, seems, so far as the courts of the United States are concerned, too well settled now to admit of serious doubt or cavil, whatever may have been its uncertainty at any earlier time, or how much individuals may doubt as to its wisdom; that is to say, where a vessel, herself free from fault, and not contributing to the collision, is in tow of another, the latter having entire control and direction of the tow's movements, and itself capable and suitable for performing the work in hand, being operated and navigated by competent, skilled, and trusted navigators, and damage arises from the negligence of the towing vessel, or those having control of her, it is considered and treated as an independent contractor, and solely liable for the injury caused by its negligence and want of care, and the ship in tow is relieved from liability, although the collision may actually be with that vessel" (pp. 984-5).

Indeed the decision below is contrary to the principle of *Sturgis* v. *Boyer,* 24 How. 110,* where this Court said:

"Vessels engaged in commerce are held liable for damage occasioned by collision, on account of the complicity, direct or indirect, of their owners, or the negligence, want of care, or skill, on the part of those employed in their navigation. Owners appoint the master and employ the crew, and consequently are held responsible for their conduct in the manage-

* It is to be noted that in *Sturgis* v. *Boyer,* the ship was without her own propelling power.

ment of the vessel. Whenever, therefore, a culpable fault is committed, whereby a collision ensues, that fault is imputed to the owners, and the vessel is just as much liable for the consequences as if it had been committed by the owner himself. No such consequences follow, however, when the person committing the fault does not, in fact, or by implication of law, stand in the relation of agent to the owners. Unless the owner and the person or persons in charge of the vessel in some way sustain towards each other the relation of principal and agent, the injured party cannot have this remedy against the colliding vessel. By employing a tug to transport their vessel from one point to another, the owners of the tow do not necessarily constitute the master and crew of the tug their agents in performing the service. They neither appoint the master of the tug, or ship the crew; nor can they displace either the one or the other. Their contract for the service, even though it was negotiated with the master, is, in legal contemplation made with the owners of the vessel, and the master of the tug, notwithstanding the contract was negotiated with him, continues to be the agent of the owners of his own vessel, and they are responsible for his acts in her navigation. *Sproul* v. *Hemmingway*, 14 Pick., 1; 1 Pars. Mar. L., 208. *The Brig James Gray* v. *The John Frazer et al.*, 21 How., 184" (p. 123).

In *The Eugene F. Moran*, 212 U. S. 466, both tow and tug were found at fault. This Court, referring to *Sturgis* v. *Boyer, supra*, said:

"In that case it was held that a tug, having control of a vessel in tow, was solely responsible to a lighter upset by the vessel, through the fault of the tug alone * * * We see no reason why the decision should not stand. No doubt the fiction that a vessel may be a wrongdoer, and may be held, although the owners are not personally responsible on principles of agency, or otherwise, is carried further here than in England. * * * Possibly the survival of the fiction has been helped by the convenient security that it furnishes, just as no doubt the responsibility of a master for a servant's torts, that he has done his best to prevent, has been helped by the feeling that it was desirable to have some one who was able to pay. * * * But, after all, a fiction is not a satisfactory ground for taking one man's property to satisfy another man's wrong, and it should not be extended" (p. 474).

See also *The Clarita*, 23 Wall. 1, 11.

Contra The China, 7 Wall 53
Ralli v Troop 157 U.S. 402
The Helen 57 Fed (2) 54, 55

POINT IV

THE TUG TRITON IS LIABLE IN REM FOR THE NEGLIGENCE, IF ANY, OF THE MASTER OF THE TUG TRITON, WHO WAS IN CHARGE OF THE TUG'S NAVIGATION.

This is not a case of where the master of the tug leaves his tug in charge of another person. The record is clear that the master of the *Triton*, although on the bridge of the steamer, was in full charge of the *Triton's* navigation. He testified:

"Q. You were in full charge of the navigation of the *Gulf Trade* and her two attending tugs? A. Yes, sir; I gave all of the orders that were given there that day.
Q. Were all of those orders obeyed promptly? A. They were" (R. 401).

If the master of the *Triton* was guilty of negligence, as both the District Court and the Circuit Court of Appeals have found, there can be only one result, to wit, the tug *Triton* is liable *in rem* for her master's negligence. There is a direct maritime relation between a tug and her tow which is not dependent upon contract. The tug as a legal entity owes her tow a duty of skillful and proper conduct. It is immaterial that the tug master temporarily left his tug and was standing on the steamer's bridge to better conduct the manœuvre. If his orders were improper, such as to constitute negligence, not only he is liable but his tug is liable *in rem*. In other words, a tug cannot, by the mere fact that her master is on the steamer's bridge, exempt herself from liability for her master's negligence.

In *The Arturo*, 6 Fed. 308 (Circuit Court, D. Mass.) cited with approval in *The John G. Stevens*, 170 U. S. 113, 124, two

tugs belonging to different owners, made fast to a ship (barkentine) one on each side, backed her out of a dock and stranded her on a shoal. Both tugs were held liable, although the master of one was in charge of the navigation and the other acted under his directions. The Court said:

"If, therefore, one tug was wholly in fault, as by a defect of her machinery or the like, she alone would be responsible. But for their joint action, so far as it conduced to the loss, I hold them to be jointly responsible. And that is this case" (p. 312).

"If the tow does not command, the tugs do, and they arrange between themselves how the navigation shall be conducted. The rights of third persons do not depend upon their ownership or command. I have taken for granted that there might be a still further relaxation as to any fault distinctly committed by one of them only" (p. 313).

In *The Gallia,* 196 Fed. 509 (S. D. N. Y.), the steamship *Gallia,* without steam, while being shifted from one side of a pier to the other, by three tugs (two owned by McCaldin), went too far astern and came into collision with other vessels. The master of one of the tugs of W. J. McCaldin went on the steamer's bridge and took charge. The Court held both McCaldin tugs liable *in rem* and exonerated the third tug.

In *The Mexpet,* decided January, 1921 (S. D. N. Y.) not reported; reversed on the merits, 288 Fed. 718 (C. C. A. 2nd Cir.), all four tugs were held liable *in rem* for the stranding of the steamship *Gargoyle* while being shifted in New York Harbor. The master of one of the tugs was on the steamer's bridge in charge of the manœuvre at the time. The steamer's master and third officer were also on the bridge. A libel was filed by the owner of the steamer against the four tugs *in rem.* The towboat owners were not proceeded against *in personam,* as in the instant case.

The District Court did not find any fault on part of any of the tugs, but found that the stranding was due to the negligence of the master of the *Dalzelline* (tug master on the steamer's bridge in charge), and held all four tugs liable *in rem* upon the theory that if the tug master in charge was at fault,

"all the tugs were at fault, not by imputing his fault to them, but because each tug contributed to directing the *Gargoyle* out of her proper course and putting her ashore."

In the instant case if the *Gulftrade's* navigation was improper, it was due to the negligence of the master of the tug *Triton,* who was on the steamer's bridge in full charge of the navigation of both steamer and tugs. Admittedly all his orders were carried out properly. He cannot so divorce himself from his tug that the tug should not be cast in damages for his negligence. It is immaterial whether his station, while handling the steamer, was in his own pilot house or on the bridge of the steamer. If the mere fact that the tug master was on the steamer's bridge is sufficient to exonerate the tug, it would be a simple expedient in all cases involving the relation between tug and steamer for the tug master to give his orders from the steamer.

When a tug participates in an erroneous manœuvre, which is the proximate cause of damage, the tug is an offending *res.* Her participation may consist of following an improper order from her own master, who is on the bridge of a steamer alongside, or failing to act because the order is not given by her own master, or for improperly executing the order. The result is the same.

If the tug *Triton* is not liable *in rem* under these circumstances, *i. e.,* her own master having been found guilty of negligence, tugboat owners can avoid liability for negligence

by arranging a chartering or operating company of no financial responsibility. That company would supply the commanding navigator, and the latter, standing upon the steamer's bridge, would direct all the manœuvres of the tugs, which would then be exempt from all liability so long as they obeyed his instructions.

CONCLUSION

THE DECISION OF THE CIRCUIT COURT OF APPEALS SHOULD BE MODIFIED, AND THE CAUSE REMANDED WITH DIRECTIONS TO ENTER A DECREE DISMISSING THE LIBEL OF THE CHARLES WARNER COMPANY AGAINST THE GULFTRADE.

Respectfully submitted,

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Proctors for steamship *Gulftrade* and
Gulf Refining Company.

Dated, New York, September 26, 1928.

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CHARLES ELMORE

IN THE

UNITED STATES SUPREME COURT

October Term, 1928.

No. [redacted] 22

CHARLES WARNER COMPANY,
Petitioner,

v.

INDEPENDENT PIER COMPANY,
Respondent.

No. 624. 23

CHARLES WARNER COMPANY,
Petitioner,

v.

Steamship "GULFTRADE," Whereof GULF REFINING COMPANY is Claimant,

On Writs of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

Brief for Independent Pier Co., Respondent

HOWARD M. LONG,
Proctor for Independent Pier Co.

I. F. Huntzinger Co., Appellate Printers, Camden, N. J.

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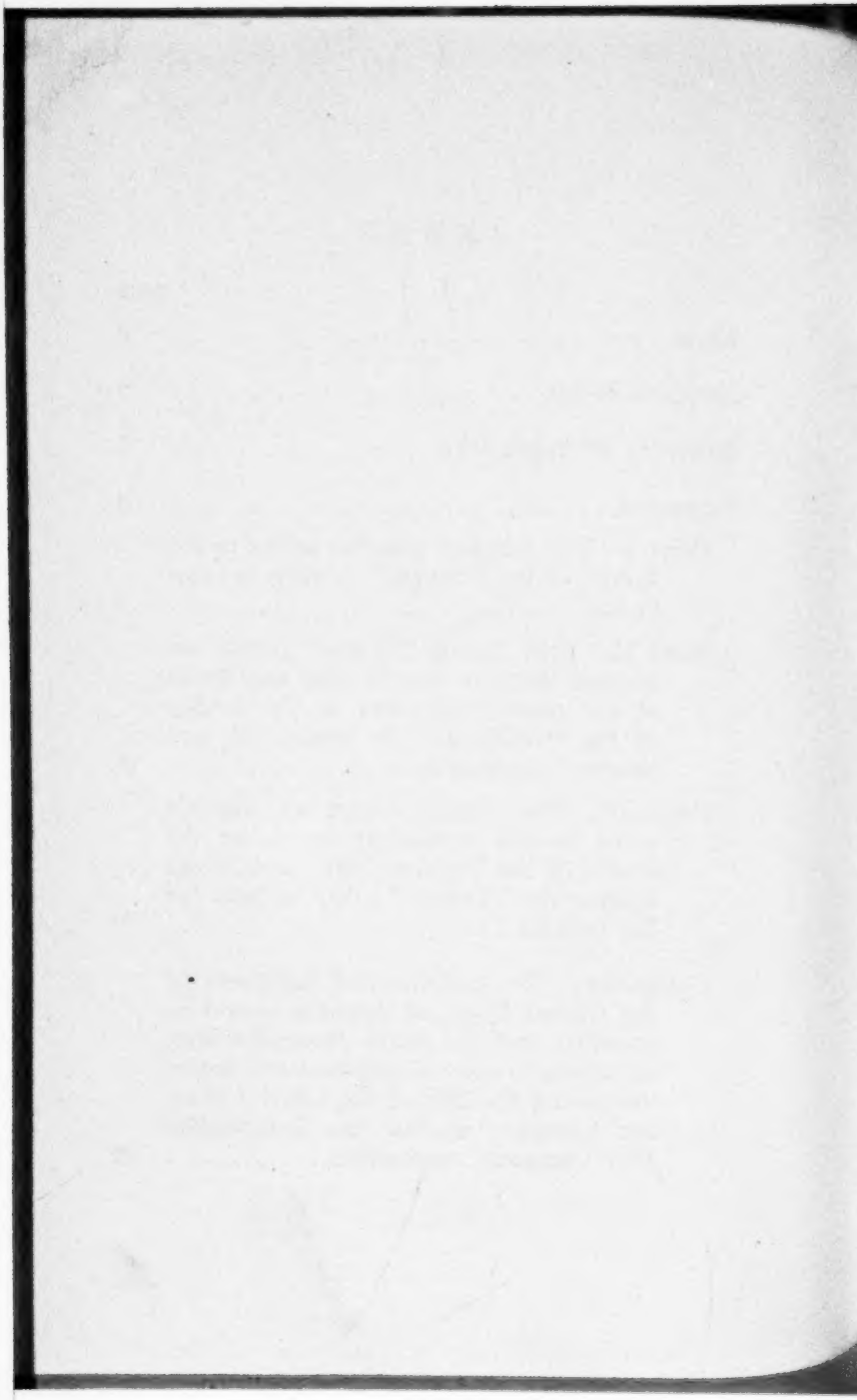

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1928.

No. 623.
CHARLES WARNER COMPANY,
Petitioner,
v.
INDEPENDENT PIER COMPANY,
Respondent.

No. 624.
CHARLES WARNER COMPANY,
Petitioner,
v.
STEAMSHIP "GULFTRADE," WHEREOF GULF REFINING COMPANY IS CLAIMANT.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR INDEPENDENT PIER COMPANY, RESPONDENT.

These are writs of certiorari to review a decision of the Circuit Court of Appeals for the Third Circuit modifying a decree of the District Court for the Eastern District of Pennsylvania.

The cause of action arose out of a collision which occurred Oct. 1, 1923, at 2 P. M., in the Schuylkill River some distance above the juncture of that river with the Delaware River, between the steamship "GULFTRADE" and a hawser tow of loaded sand scows in tow of the petitioner's steamtug "TAURUS." At the time of the collision the steamer "GULFTRADE," a large tank steamer 429.3 ft. long, 59.2 beam, drawing 26½ to 27 feet was being navigated up the Schuylkill River. The steamtug "TRITON" and "F. A. CHURCHMAN" (the "TRITON" being owned by respondent, Independent Pier Company), were made fast to the port quarter and port bow of the "GULFTRADE" for the purpose of assisting the "GULFTRADE" around the bends of the river located above the point of collision, but the engines of neither tug were in motion until just before the collision. The motive power of the flotilla being furnished by the "GULFTRADE." The master of the tug "TRITON" was on the bridge of the "GULFTRADE" in charge of her navigation.

The libel was filed by the petitioner, Charles Warner Co., as owner of the sand scows against the S. S. "GULFTRADE" in *rem*, and against the Gulf Refining Company, her owner, in *personam*, and also against the tugs, "TRITON" and "CHURCHMAN", in *rem* and against the Independent Pier Company and Alfred C. Churchman, owners of the tugs, in *personam*, to recover for damages sustained by its lighters as a result of a collision with the "GULFTRADE."

FACTS.

On October 1, 1923, the steamship "GULFTRADE" loaded with a cargo of oil in bulk was proceeding up the Delaware River bound for Girard Point located on the Schuylkill River. The weather was fair, tide flood, light northerly wind. When about off Fort Mifflin, Delaware River the tugs "TRITON" and "F. A. CHURCHMAN" came alongside to assist her to her berth at Girard Point. The "CHURCHMAN" was made fast on the "GULFTRADE'S" port bow and the "TRITON" on her port quarter. Quillen, master of the "TRITON" went on the "GULFTRADE'S" navigating bridge to direct her navigation while Marvil, master of the "CHURCHMAN" also went on the bridge to transmit any orders which Capt. Quillen might give to the tugs. The tug's engines were not in motion until shortly before the collision and the motive power of the "GULFTRADE'S" flotilla was supplied by the engine of the "GULFTRADE." (R. 370-371.)

The tug "TAURUS" owned by the petitioner, Charles Warner Company with petitioner's loaded sand scows Nos. 18, 33, 44, 53 in tow on hawsers astern, was proceeding up the Delaware River ahead of the "GULFTRADE" bound to certain wharves on the Schuylkill River. The tow of the "TAURUS" was made up in two tiers of two scows each, No. 53 port hawser boat, No. 18, starboard hawser boat, No. 44, port boat second tier and No. 33 starboard boat in second tier. The "TAURUS" was 65 ft. in length, the hawser between her and the scows in forward tier 100 feet in length, each of the scows about 120 feet long, so that the length of the

"TAURUS" and tow was in excess of 400 feet (R. 33-34) and her draft was not over 10 feet. (R. 547.)

The "GULFTRADE" was gradually overhauling the "TAURUS" and her tow. When tow was about one-quarter mile from the mouth of the Schuylkill River the "GULFTRADE" blew a signal of one blast which the "TAURUS" immediately answered with a signal of one blast. The "GULFTRADE" was then about half a mile from the mouth of the Schuylkill River. (R. 372.) At this time the engines of the "TRITON" and "CHURCHMAN" were not being operated and the motive power was being furnished by the "GULFTRADE."

When the "TAURUS" was about one-sixteenth of a mile away from the two buoys just inside the mouth of the Schuylkill River, the "GULFTRADE" blew another one blast which the "TAURUS" answered with her signal of one blast (R. 372-373). The "TAURUS" and her tow passed in between the buoys, and were a little one the "GULFTRADE's" port bow.

The "GULFTRADE" came into the Schuylkill River a little to the eastward of the ranges and between these two buoys, having the red buoy on her starboard hand and the black buoy on her port hand.

As the "GULFTRADE" was entering the Schuylkill River she blew a third one blast signal to the "TAURUS" and the "TAURUS" was then about the length of the "GULFTRADE" ahead. This signal was also answered by the "TAURUS" with one blast. Shortly after answering that signal the "TAURUS" seemed to ease off to her port a quarter or half point of the compass, and then shortly afterward sheered with her tow to her starboard some two or three points, bringing the "TAURUS" across the bow of the "GULFTRADE" and pulling the tow of the

"TAURUS" to starboard and bringing the "TAURUS" on the starboard side of the "GULFTRADE" and her starboard head lighter also across the "GULFTRADE'S" bow. This lighter after the collision passed down on the starboard side of the "GULFTRADE" and turned over (R. 373-380 inclusive).

The Court of Appeals found that at least two and probably three one blast passing signals were exchanged between the flotillas (R. 581). The District Court found that the channel of the Schuylkill River had a charted depth at mean low water of about the draft of the "GULFTRADE" and also found that three one-whistle passing signals were exchanged between the flotillas.

The width of the channel of the Schuylkill River at and in the vicinity of the point of collision, for vessels of the depth of the "GULFTRADE" was about 200 feet and the "GULFTRADE" and vessels of her draft were compelled to follow the ranges which were set on the end of League Island shore (R. 422-423). Soundings made by Wilmer, a disinterested witness, showed that for a distance of 1000 feet in the Schuylkill River above the buoys the "TAURUS" and her tow could approach to within 75 feet of the west bank while the "GULFTRADE" could not get closer than 200 feet. These soundings are attached to the record and appear immediately after p. 573 (R. 425-434, inc.).

Immediately after the "TAURUS" and her tow had gone to their starboard, the "GULFTRADE'S" helm was put hardaport, the tugs hardaported under the orders of Quillen and the "GULFTRADE'S" engines, as well as those of the tugs were used in attempting to swing the "GULFTRADE" away from the "TAURUS" and her tow but the collision could not be avoided, and the bluff of the "GULFTRADE'S" port

bow first came into collision with the *starboard side amidships of lighter No.* 33 and lighter No. 18 the starboard hawser lighter came right across the bow of the "GULFTRADE" into collision with the "GULFTRADE's" stem, the tow line parted and the No. 18 drifted down the starboard side of the "GULFTRADE" and capsized some forty to fifty feet from the "GULFTRADE's" starboard side. (R. 234-238; 256, 257, 263, 275, 277; 302, 303, 307, 308, 310 313; 324-327; 377, 408, 415, 417.)

DECISIONS BELOW.

The District Court found that the "TAURUS" and her tow were close to midchannel when their swing into the Schuylkill River was about completed, and that the "TAURUS's" tow swung to eastward athwart the channel and across the "GULFTRADE's" course, but held that those in charge of the "GULFTRADE" were bound to anticipate such a condition, and that the "GULFTRADE's" navigator made a miscalculation and brought about the collision, in that he expected the tow would be out of his way by the time the "GULFTRADE" reached the passing point, and therefore found the "GULFTRADE" and her navigator in fault. It held the Independent Pier Company in *personam* primarily and the "GULFTRADE" secondarily.

The Circuit Court of Appeals agreed with the finding of the District Court as to the presence of the "TAURUS" and her tow in midchannel and that the tail of her tow was still in the channel when the collision occurred and held the "TAURUS" in fault for not keeping her tow in line and for answering

the passing signals of the "GULFTRADE" when her tow was not in a position to let the "GULFTRADE" pass in safety. It found the "TAURUS" in fault for giving three consents to the "GULFTRADE" to come ahead, relying too much on the "TAURUS's" ability to get her tow out of the channel. It therefore found that both the "TAURUS" and the "GULFTRADE" made a miscalculation and held them both in fault, and decreed against the "TAURUS" and the Independent Pier Company primarily and the 'GULFTRADE" secondarily.

Both Courts found that the "GULFTRADE's" navigation was in charge of Quillen, master of the tug "TRITON" and the servant of the Independent Pier Co.

SUMMARY OF ARGUMENT.

It will be argued.

1. That the collision was due solely to the failure of the "TAURUS" to keep her tow in line.

2. That the tug "TRITON" should not be held liable in *rem* for the negligence of her master who was on the bridge of the "GULFTRADE" in charge of that steamer's navigation.

3. The Circuit Court of Appeals erred in not completely reversing the decree of the District Court, and in not holding the "TAURUS" solely at fault for the collision.

ARGUMENT.

Point I.

The collision was due solely to the failure of the "Taurus" to keep her tow in line.

It is admitted that this is a case of a collision between two vessels, one of which is the overtaken and the other the overtaking vessel and the duties of the respective vessels are clearly set forth in the rules printed, page 11 of the petitioner's brief, and it is therefore admitted that the "TAURUS" being the vessel ahead should not have attempted to cross the bow or crowd upon the course of the "GULFTRADE" which was the passing vessel.

Article 21 of the Pilot Rules provides:

> "Where by one of these rules one of two vessels is to keep out of the way, the other vessel shall keep her course and speed."

In *The Garden City,* 19 Fed. 524, and in the *Dentz,* 29 Fed. 525, it was held where an overtaking vessel has signalled her intention to pass another vessel on her starboard side, and the overtaken vessel has assented to such passing signal, that it is the duty of the overtaken vessel to change her course to port if she has unobstructed sea room on that side so as to give the overtaking vessel more room to pass, if safety requires it. See also *The Menominee,* 197 Fed. 736.

The swing of the "TAURUS'S" bow to the starboard is established not only by the testimony of witnesses from the "GULFTRADE," the "TRITON" and

the "CHURCHMAN" (R. 322-327 inc., 331, 334, 340, 354, 355, 359, 361, 376, 377, 234-238, 256-263 inc., 408-417 inc., 457-473 inc., 483, 484, 524, 424), but it is also testified to by Geddes the master of the "TAURUS" who said:

"Q. As you rounded that buoy, did you make any change in the wheel, when you got your tow past the buoy?

A. After the tow was clear of the buoy, going into the mouth of the Schuylkill the stern barges swung out toward mid-channel. I then ported my wheel for an instant, bearing my tug to the starboard.

Q. What was the purpose of that?

A. The purpose of that was to throw the stern tow to the westerly shore; to pull them in out of the mid-channel.

Q. How long did you keep your wheel to port?

A. About half a minute.

Q. And then, what was your next movement of the wheel?

A. I starboarded my wheel to haul her back on the original course.

Q. Did you receive any further signal from the "GULFTRADE"?

A. I received another prolonged blast of the steam whistle.

Q. Where were you then? Was that before or after you rounded the black buoy?

A. If I remember, it was after the tow had pulled clear of the black buoy.

Q. Did you answer that signal?

A. Yes, sir.

Q. What did you answer that signal with?

A. One prolonged blast of the steam whistle."

Under cross-examination the "TAURUS's" master repeated his testimony as to the change of course of his tug and tow (R. 50-51).

And while under cross-examination by Mr. Dawson, Capt. Geddes said that he was just passing the black buoy when his tow swung out to mid-channel or near midchannel (R. 55) and that the stern of the stern barges in tow swung out near mid-channel (56).

The District Court found that the "TAURUS" and her tow made this swing to starboard and the Court of Appeals agreed with that finding, and said, "*We are satisfied from the proof and the circumstances that the tail of the tow was still in the channel when the collision occurred.*" (R. 580.)

The pilot of the "TAURUS" attempted to minimize the effect of the changes of the helm of his tug and said that these changes were made to counteract the effect on the tow of the flood tide in the Delaware.

The fact remains that the "TAURUS" and her tow after assenting to the passing signals of the "GULFTRADE" and while under the duty to hold her course and speed, failed so to do and swung athwart the channel bringing herself and her tow across the bow of the "GULFTRADE."

This fault on the part of the "TAURUS" and her tow was the sole cause of the collision.

This was a clear violation of Article 21.

In the *Aurora,* 258 Fed. 439 (C. C. A. 2nd C.) the Court held the hawser tow solely liable for failing to keep her tow in line:

> "The cause of the collision, undoubtedly, was the effect of the tide in swinging the tail of the Aurora's tow toward Staten Island, but this swing could not be increased by her porting

the wheel as she passed the Busby. The tow swing so far on the port side that one of the witnesses says he could see the Aurora's stern, and she was sheering a little toward Staten Island—this probably due to her porting the wheel. If the tow was following the sheering tug, the tail of the tow must have swung toward Staten Island, considering the location as given by the Aurora's witnesses of its tow; and considering the space occupied by having four barges abreast, and the fact that the Aurora's tow were light barges, it is quite apparent that the Busby then was several hundred feet off the Staten Island shore and the Aurora crowded her over into this position. * * *

The fault may well be predicated upon the Aurora alone, with such a long tow in tide waters in an uncontrollable state. She was obliged to keep her tow in line, and if she had not sufficient power to do this alone, it was incumbent upon her to employ helpers. The Busby went as close to the Staten Island shore as safety would permit, and we are of the opinion that she should be exonerated from fault." (p. 441.)

See also, *The Wrestler,* 232 Fed. 448 (C. C. A. 2nd C.), where the tug with a hawser tow was held solely at fault on this account.

The duty of the "TAURUS" to keep her tow in line is clearly set forth in the opinion of Judge Hand, speaking for the Circuit Court of Appeals, 2nd Circuit, in the case of *The Madison,* 250 Fed. 850, who held a tug in fault for allowing her tow to swing out of line while navigating in the East River. Judge Hand said that while the East River is not a nar-

row channel, the obligation to keep tows in line was recognized in the case of the *Wrestler,* 232 Fed. 448, and if the tows did not have sufficient power to do this alone they must employ helpers.

The argument made on behalf of the petitioner in its brief, pages 11 to 15 inclusive, that the "GULFTRADE" as the overtaking vessel was required to keep out of the way of the "TAURUS" and her tow, without recognizing that it was also the correlative duty of the "TAURUS" and her tow to hold their course and speed, and not to allow themselves to swing out of line, is unsound in law and in common sense.

The Circuit Court of Appeals held the "TAURUS" in fault for assenting to the one whistle passing signals of the "GULFTRADE" because it found that the "TAURUS" and her tow, due to a swing of the tow to mid-channel, was not in a position to let the "GULFTRADE" pass in safety.

The petitioner attempts in its brief, pages 11 to 22, to show error in the Court of Appeals in making such a finding, and argues that it was the duty of the "GULFTRADE" to insure a safe passing of the two flotillas.

One of the authorities upon which the petitioner bases his argument is the opinion of *Judge Waddill in The City of Baltimore,* 282 Fed. 490, quoted page 13 of petitioner's brief, and yet, in that very case *Judge Waddill* held the *Tug Britannia* which was the overtaken vessel in fault and said:

> "Upon the testimony it even seems quite certain that the Brittannia should not have given assent to the port passage in the position in which the two vessels were at the time, and when as she claimed the Baltimore had run up

on her without previous knowledge of her presence."

In *Atlas Transportation Company v. Lee Line Steamers,* 235 Fed. 492, quoted by petitioner in his brief, pages 14-15. The Circuit Court of Appeals of the 8th Circuit, said page 495:

> "Under these rules the Josh Cook had the right and the duty to hold her course. It was not its duty to keep away from the Rees Lee unless a collision should become imminent. The Rees Lee had the right to pass the other boat, if it could do so with safety to both. It had to be its own judge as to the matter of safety, as whatever risk attended its passage from the narrowness of channel, the shallowness of water, the current, suction or other causes, except the fault of the Josh Cook, was assumed by the Rees Lee. The reply of the Josh Cook to the passing signal of the Rees Lee was no more than an assent to it, at the risk of the vessel proposing it. It expressed an understanding of what the Rees Lee proposed to do, and an agreement not to thwart it; but the success of the maneuver was at the risk of the Rees Lee."

The Court there held that the overtaking vessel could not be held for the fault of the overtaken vessel and that the overtaken vessel's assent to the passing signals expressed an understanding of what the overtaking vessel proposed to do and the overtaken vessel agreed not to thwart that maneuver.

It is to be noted in this connection that that Court found page 496:

> "The witnesses agree that as soon as the passing signal had been given the Josh Cook

yielded some of the channel to the passing boat, by taking a course slightly further east than the one it had pursued and was entitled to hold."

The facts in this latter case are not analogous to the case at bar because the overtaking vessel in that case while running at fast speed ran into shoal water and sheered across the channel and into collision.

Nor is the case of *The Thoroughfare* decided by this *Court*, 48 *Supreme Ct.* 511, analogous to the case at bar because there was no overtaking situation there.

On page 16 of petitioner's brief it is stated that the sole defense pleaded and urged at the trial and upon argument to the Circuit Court of Appeals, was that immediately preceding the collision the "TAURUS" failed to maintain her course and speed but sheered to starboard so that the scows in her tow were carried to starboard and across the course of the "GULFTRADE." This is a clear mistake. By reference to Article 15, of the answer of Independent Pier Co., Record 21, it will be observed that the third and fourth charges of fault made against the "TAURUS" are:

"3. In that she failed to adhere to the passing signals which were exchanged between the two flotillas.

4. In that she failed to hold her course so that the 'GULFTRADE' with her tugs could pass saefly to the eastward of said tug and the scows which she had in tow."

And also by reference to Article 14 of the answer of the Gulf Refining Co. charges of fault, three, four and five, viz:

"3. In that she failed to navigate in accordance with whistle signals exchanged with the 'GULFTRADE.'

4. In that she unnecessarily and unduly crowded upon the course of the 'GULFTRADE.'

5. In that she failed to keep her tow tailing properly behind her." (R. 28.)

All of these faults were asserted at the trial, discussed and argued before the District Court, and were argued before the Circuit Court of Appeals. In fact the ninth assignment of error on behalf of the Independent Pier Co. (Record 558) and the twelfth assignment of error on behalf of the Gulf Refining Co. (Record 566-567), allege error in the District Court in failing to find that the "TAURUS" did not keep her tow tailing properly behind her after consenting to the passing of the "GULFTRADE."

It is true that both Courts determined against the charge that the "TAURUS" and her tow *sheered* but at the same time they also both found that the "TAURUS" *failed to keep her tow tailing properly behind her and that said tow did swing into mid-channel and athwart the channel.* And as before mentioned the Circuit Court of Appeals condemned the "TAURUS" for assenting to the passing of the "GULFTRADE" under such a condition of her tow (R. 581).

Whether the "TAURUS" and her tow sheered or swung across the "GULFTRADE'S" course, in view of the passing signals, makes no legal difference, in either case the "TAURUS" violated her duty under the passing signals, and this sheer or swing, whichever this Court determines it to be, was the sole cause of the collision.

Point II.

That the tug "Triton" should not be held liable in rem for the negligence of her master who was on the bridge of the "Gulftrade" in charge of that steamer's navigation.

The District Court, in its opinion, under the heading of conclusions of law, Record, 551, held:

> "It will be noticed that the steamship, the piloting tugs and the owners of the latter have been all made respondents. Assuming the negligence of the steamship, there is no doubt of her responsibility, as she did the damage. We make the fact finding that the tug owners (through their servants, the masters of the piloting tugs) were the navigators of the steamship whose negligence, in which all the individual respondents participated, was the proximate cause of the damage done. We conclude from this the liability of such owners. The remaining question is the responsibility of the tug respondents in *rem*. The fact finding is made that up to the point of time when the collision was imminent the tugs themselves had no part in the movement of the steamship. She was moved by her own power and was towing the tugs. All the tugs did was done in the effort to lessen the consequences of the collision and in no sense was a contributing cause.
>
> The conclusion reached is that the tugs are not answerable in damages and that the libel as against them should be dismissed without costs."

This conclusion is fully supported by the testimony. After the "TRITON" came alongside the "GULFTRADE," Quillen, her master, went up on the bridge of the "GULFTRADE," and Hearn, the "TRITON'S" pilot, went into the pilot house and took charge of that tug (R. 229). After the tugs had been made fast to the steamer and the flotilla was proceeding up the river, the "TRITON'S" engines were not in motion, but the propelling power of the flotilla was furnished by the engines of the "GULFTRADE" (R. 230).

The only order to the "TRITON" was given immediately before the collision by Quillen, who was on the bridge of the "GULFTRADE" at the time, and this order was, "Come ahead full speed and hardaport." This order was obeyed (R. 235).

At the time the order was given the "TRITON'S" engines were stopped; the purpose of the order was to sheer the "GULFTRADE" to her starboard, but immediately after the order was given the collision occurred (R. 235).

The basis for the imposition of a legal liability in *rem* in a collision case is that, according to the admiralty law, the collision impresses upon the wrongdoing vessel a maritime lien. *The China v. Walsh,* 7 Wallace 53, 19th Law Ed. 67, 73.

The "TRITON" cannot be held liable in *rem* unless she did some negligent act or acts, or negligently omitted to do something which she was required to do.

In the *Sarnia,* 261 Fed. 900, the tugs Palmer and Dalzell were assisting the steamer Sarnia into her berth. The master of the tug Palmer was on the Sarnia's bridge and in charge of the operation. While the steamer was warping into the slip, she came into collision with the barge. The District Court held the tug Palmer liable in *rem,* but the

Circuit Court of Appeals reversed that decision and said, by JUDGE HOUGH, page 901:

> "The form of this decree is wrong. The tug Palmer committed no fault and when Barrett furnished the Sarnia with a pilot in the person of Capt. Slauer he did not thereby promise a maritime lien on his tug for whatever errors Capt. Slauer might commit while standing on the Sarnia's bridge, and managing that steamer with her own steam. The Palmer was as innocent as the Dalzell, and for the same reason."

It is to be noted, from the report that Mr. Chauncey I. Clark, of counsel for the "GULFTRADE" and her owner in this case, appeared for the appellant, Barrett, owner of the tug Palmer, the appellant in the Sarnia case.

In the *Procida,* 278 Fed. 895, the Steamship Procida was being shifted by the tugs Timmons, Murray, and McCaldin Brothers, and, during the operation, she was brought into collision with another vessel. The Procida was not operating under her own motive power but was being towed by these tugs. Edward M. Timmons had contracted with the agent of the owner of the Procida to remove her from the Erie Basin to the north side of Pier 74, North River, New York City.

The owner of the Procida sued Timmons in *personam,* on his contract to furnish the tug and do the work properly, and also sued the tugs in *rem* in tort. The District Court held Timmons liable in *personam* for the negligence of Keene, the master of the tug John J. Timmons, who was in charge of the operation and also held the tug Murray in *rem* for negligence, and exonerated the tug Timmons and the tug McCaldin Brothers. On appeal, Judge Hough held that Timmons' liability in *personam* was to be de-

termined upon principles of agency, and that, since he undertook to do the job, by Capt. Keene, his agent or servant, that he, Timmons, was responsible in *personam* as principal for Keene's negligence, and said, page 898:

> "Timmons' liability as asserted, permits no application of the doctrine of marine tort; nor did he, by the mere act of agreeing to move the Procida, create a conventional maritime lien for non-performance or mal-performance in respect of the tugs furnished: The Sarnia (C. C. A.) 261 Fed. 900. This does not mean that any towing or helper tug might not be obliged to respond; but the proximate reason for such response would be its own wrongdoing, and not an owner's contract. This is no more than the familiar doctrine of towers liability which always depends upon that lack of care under the circumstances, which is negligence."

The cases of *The Gallia,* 196, Fed. 509, and the *Mexpet,* quoted on page 19 of the brief for the "GULFTRADE" and her owner, were both cases decided by the District Court for the Southern District of New York, and their conclusions in holding the tugs in *rem,* where, there was no evidence of any fault upon the tugs, stands reversed by the decisions of the Circuit Court of Appeals of the Second Circuit in the cases of The Sarnia and The Procida, *supra.*

It is to be noted that the petitioner, in its brief, neither under the heading of questions of law, on page 8 thereof, nor under the heading of specifications of errors relied upon, page 9, makes any charge of error against either the District Court or the Circuit Court of Appeals for exonerating the "TRITON in *rem.*

While the "GULFTRADE's" flotilla was proceeding up the river and until immediately before the collision, the "TRITON" was being towed by the "GULFTRADE" alongside, and she was dependent on the "GULFTRADE," not only for her motive power but for the direction of her course. The "TRITON" was, in fact, for the time being, a part of the "GULFTRADE."

The tugs "TRITON," the "CHURCHMAN" and the "GULFTRADE" must be considered as one vessel. 11 *Corpus Juris*, 1071; *The M. E. Luckenback*, 173 Fed. 155; *The American Steamship Co. v. American Steel Barge Co.*, 129 Fed. 65.

The Umbria, 153 Fed. 851;
The Gladys, 155 Fed. 653.

In other words, the whole flotilla was under the general charge of Quillen, yet Quillen had personal charge only of the "GULFTRADE," while the "TRITON" was under the charge of Hearn, her mate (R. 229).

Point III.

The Circuit Court of Appeals erred in not completely reversing the decree of the District Court and in not holding the "Taurus" solely at fault for the collision.

Since both the District and Circuit Court of Appeals have found, and the evidence in the record overwhelmingly establishes the swing or sheer of the "TAURUS" and her tow to her starboard, and across the channel after passing whistles had been exchanged, and the "GULFTRADE" was proceeding to pass the "TAURUS" and her tow, and since this

swing or sheer brought about the collision, then the "TAURUS" should be held solely in fault for the collision.

A further fact which absolutely proves that this swing on the part of the tow actually occurred is that the *first impact of the collision was between the bluff of the* "GULFTRADE'S" *port bow and the starboard side of No. 33.* The No. 33 was the starboard scow of the rear tier (R. 97, 74, 51, 137, 138). The testimony here quoted all comes from the petitioner's witnesses on the tug and scows.

The fact that such was the character of the first impact of the collision proves beyond the shadow of a doubt the sheer or swing of the towed scows to their starboard, and right across the course of the "GULFTRADE." This sheer or swing was the sole cause of the collision and both the District Court and the Circuit Court of Appeals should have so determined.

CONCLUSION.

It is respectfully suggested that the decision and judgment of the Circuit Court of Appeals should be modified and the cause remanded with directions to enter a judgment and decree dismissing the libel of the Charles Warner Co., against the Independent Pier Company, respondent.

HOWARD M. LONG,
Counsel.

HOWARD M. LONG,
Proctor for Independent Pier Co.

Dated: Philadelphia, Sept. 27, 1928.

SUPREME COURT OF THE UNITED STATES.

Nos. 22 and 23.—October Term, 1928.

Charles Warner Company, Petitioner, 22 *vs.* Independent Pier Company. Charles Warner Company, Petitioner, 23 *vs.* Steamship "Gulftrade," Whereof Gulf Refining Company is Claimant.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[November 19, 1928.]

Mr. Justice McReynolds delivered the opinion of the Court.

These two numbers on our docket present one cause in admiralty. It arose out of a collision between the single screw steamer Gulftrade—429 feet long, 59 foot beam—and two loaded scows which, with two others, were being towed by the tug Taurus upon hawsers astern. The flotilla was about 400 feet long. Both the tug and scows were owned or chartered by petitioner, Charles Warner Company. The Gulftrade was accompanied by the tugs Triton and Churchman, made fast to her port bow and port quarter. They were owned respectively by Independent Pier Company and Alfred E. Churchman. The Triton's master was upon the steamer and commanded the three associated vessels.

The accident occurred in the Schuylkill River near its confluence with the Delaware at 3:00 P. M., October 1st, 1923. The weather was fair, tide flood, wind light.

Drawing her tow the Taurus passed slowly up the Delaware with the tide and rounded into the still water of the two hundred foot channel of the Schuylkill. The Gulftrade followed under her own power carrying with her the attending tugs, their engines motionless until the last moment before the collision. Shortly after the flotillas entered the Schuylkill the Gulftrade for the third time, by a single blast, indicated her desire to pass to starboard—eastward. The Taurus (as she had done twice before while in The Delaware) gave an assenting blast. Attempting to pass in mid-channel, the steamer struck two of the scows and caused material loss.

The District Court found that "the set of the tide swung the tail of the tow to the eastward and more or less athwart the channel until it had straightened out. . . . This, however, was a condition which the steamship was bound to anticipate and doubtless did. What happened was that the navigator of the ship expecting the tow would go to the westward and seeing it was so headed assumed it would be out of his way by the time he reached the passing point and that a passage up mid-channel would be clear. In this he miscalculated and hence the collision." It declared the steamer guilty of negligence; the Taurus without fault; and awarded full damgaes in favor of petitioner Charles Warner Company primarily against the Independent Pier Company, owner of the Triton, and secondarily against the Gulftrade.

The Circuit Court of Appeals held—"Under the circumstances the Taurus was in fault in giving consent to the Gulftrade to come ahead, relying too much on her ability to get out of the channel. Evidently the Taurus miscalculated the situation. So, also, it seems the Gulftrade was at fault. She was the following vessel. All she had to do was to hold back and not run into the scows. She certainly saw danger ahead when she gave the second signal and she certainly saw it more imminent when she gave the third signal. It was quite clear that she did go ahead and took an equal chance with the Taurus on the ability of the latter to give her free channelway to pass. The result was a needless collision."

We cannot conclude that the Taurus was in fault. She was prudently navigated in plain view of the Gulftrade who knew the relevant facts; and by assenting that the latter might pass she certainly did not assume responsibility for the maneuver. At most the Taurus obligated herself to hold her course and speed so far as practicable, to do nothing to thwart the overtaking vessel, and that she knew of no circumstances not open to the observation of the Gulftrade which would prevent the latter from going safely by, if prudently navigated. Of course no ship must ever lead another into a trap. There was ample room for the Gulftrade to pass. But if not, she should have slowed down and kept at a safe distance. Her fault was the direct and sole cause of the collision.

By the Act to adopt regulations for preventing collisions, etc., approved June 7, 1897, (Chap. 4, 30 Stat. 96, *et seq.*) it is provided—

"Art. 18, Rule VIII. When steam-vessels are running in the same direction, and the vessel which is astern shall desire to pass on the right or starboard hand of the vessel ahead, she shall give one short blast of the steam-whistle, as a signal of such desire, and if the vessel ahead answers with one blast, she shall put her helm to port; or if she shall desire to pass on the left or port side of the vessel ahead, she shall give two short blasts of the steam-whistle as a signal of such desire, and if the vessel ahead answers with two blasts, shall put her helm to starboard; or if the vessel ahead does not think it safe for the vessel astern to attempt to pass at that point, she shall immediately signify the same by giving several short and rapid blasts of the steam-whistle, not less than four, and under no circumstances shall the vessel astern attempt to pass the vessel ahead until such time as they have reached a point where it can be safely done, when said vessel ahead shall signify her willingness by blowing the proper signals. The vessel ahead shall in no case attempt to cross the bow or crowd upon the course of the passing vessel.

"Art. 23. Every steam-vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse.

"Art. 24. Notwithstanding anything contained in these rules every vessel, overtaking any other, shall keep out of the way of the overtaken vessel."

Under these regulations the duty of the Gulftrade was clear. She should have anticipated the effect of the flood tide in the Delaware upon the flotillas as they rounded into the still water of the Schuylkill and kept herself out of the zone of evident danger.

In *Southern Pacific Company* v. *Haglund* (The Thoroughfare), 277 U. S. 304, we said—

"The Relief was not at fault in accepting the passing signal of the Thoroughfare. This was merely an assent to the proposed passage in the rear of the Enterprise, expressing an understanding of what the Thoroughfare proposed to do and an agreement not to endanger or thwart it by permitting an interfering change in the position of the Enterprise. See *Atlas* Transp. Co. *v.* Lee Line Steamers (C. C. A.), 235 Fed. 492, 495. And the Relief, being in a position to fully carry out its agreement, was under no obligation to decline the passing signal

because of the approach of the Union on the other side and to sound instead a warning signal. There was nothing in the situation to indicate that the approach of the Union would prevent the Thoroughfare from passing safely, if, as the Relief had the right to assume, it were navigated with due care."

In *Atlas Transp. Co.* v. *Lee Line Steamers*, 235 Fed. 492, 495, the Circuit Court of Appeals (8th C. C. A.) had held—

"The reply of the Josh Cook to the passing signal of the Rees Lee was no more than an assent to it, at the risk of the vessel proposing it. It expressed an understanding of what the Rees Lee proposed to do, and an agreement not to thwart it; but the success of the maneuver was at the risk of the Rees Lee."

Whitridge v. *Dill*, 23 How. 448, 453—

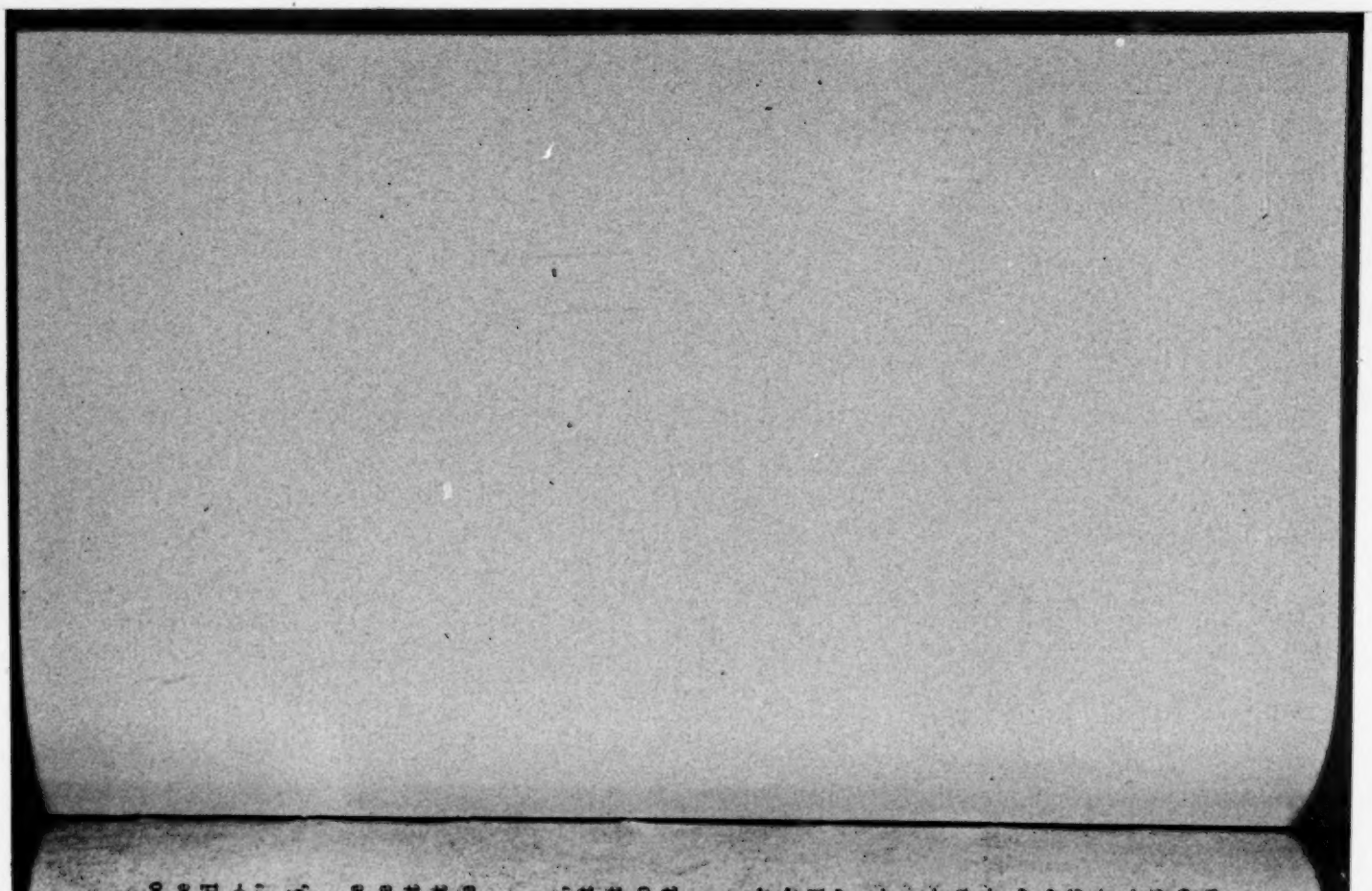
"The vessel astern, as a general rule, is bound to give way, or to adopt the necessary precautions to avoid a collision. That rule rests upon the principle that the vessel ahead, on that state of facts, has the sea-way before her, and is entitled to hold her position; and consequently the vessel coming up must keep out of the way."

The Steamer Rhode Island, Fed. Cas. 11,745—

"The approaching vessel, when she has command of her movement, takes upon herself the peril of determining whether a safe passage remains for her beside the one preceding her, and must bear the consequences of misjudgment in that respect."

See also City of Baltimore, 282 Fed. 490, 492; The Pleiades, 9 Fed. (2d) 804, 806.

Objections to the decree below were offered by counsel for respondents in their briefs and arguments here. But no application for certiorari was made in their behalf and we confine our consideration to errors assigned by the petitioner. *Steele* v. *Drummond*, 275 U. S. 199, 203; *Federal Trade Com.* v. *Pacific Paper Assn.*, 273 U. S. 52, 66; *Webster Co.* v. *Splitdorf Co.*, 264 U. S. 463, 464; *Alice State Bank* v. *Houston Pasture Co.*, 247 U. S. 240, 242; *Hubbard* v. *Tod*, 171 U. S. 474, 494; *The Maria Martin*, 12 Wall. 31, 40.

The decree of the Circuit Court of Appeals is reversed and that of the District Court is affirmed. The cause will be remanded to the latter court for further proceedings in conformity with this opinion.

Reversed.